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ABSTRACT

This publication reviews means of access to information contained in the public archives (current administrative documents and archival records) and private archives (manuscripts of personal or family origin) of many countries and makes recommendations for improving access to archival information. Sections describe: (1) the origin and development of the idea of access to archives and trends in archival use by researchers and the general public; (2) the right to information and its limits, covering principles and legal procedures for access to official documents, systems of accessibility and closed periods, categories of documents not freely accessible, limitations on legal access, special clearance procedures, and the ethics of charging for access; (3) material obstacles to access, covering the administration of public access programs, restrictions required for the physical protection of documents, and public awareness of archive contents; (4) diffusion of archival information, covering the removal of documents from storage areas, microfilming and reproducing documents, publication of archives, and copyright issues; and (5) audiovisual and machine readable archives and the archives of international organizations. Appendices present a list of the laws and rules currently in force concerning access to archives in over 100 countries; a 45-item bibliography; and the text of related laws and rules from France, the Federal Republic of Germany (FRG), the USSR, and the United States. (ESR)

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Obstacles to the Access, Use and Transfer of Information from Archives: A RAMP Study

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General Information Programme and UNISIST

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OBSTACLES TO THE ACCESS, USE AND TRANSFER OF INFORMATION FROM ARCHIVES: RAMP STUDY

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PREFACE

In order to respond more fully to the needs of Member States, particularly the developing countries, in the specialized field of records management and archives administration, the General Information Programme of Unesco has developed a long-term co-ordinated programme entitled Records and Archives Management Programme (RAMP).

In essence, RAMP reflects the major themes of the General Information Programme itself. It consequently comprises projects, studies and other activities designated to:

1. Promote the formulation of information policies and plans at national, regional and international levels.

2. Promote and disseminate methods, rules and norms for the processing of information.

3. Contribute towards the development of information infrastructures.

4. Contribute towards the development of specialized information systems in the fields of education, culture and communication, the natural sciences and the social sciences.

5. Promote practical and theoretical training of professionals and users of information.

The present study, made by Michel Duchein under contract to the International Council on Archives (ICA), is intended as a practical guide for archivists in planning and preparing programmes and activities to facilitate the accessibility and use of information contained in public and private archives.

All observations and suggestions on this study are welcome and should be addressed to the General Information Programme, Unesco, 7 pace de Fontenoy, 75700 Paris. Other RAMP studies may be obtained at the same address.

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1. INTRODUCTION. DEFINITION OF PROBLEMS

1.1 The notion of 'access to archives': origin and development

1.1.1 Definition of archives

Before taking up the study of the origins and development of the notion of 'access to archives', it would be well to begin by providing a clear definition of the word archives, which, throughout the ages and in different countries has exhibited quite a variety of meanings.

Even today, markedly different meanings are given this word by laws and regulations in accordance with various cultural areas.

In most countries with long-standing archives traditions, particularly in Europe, the word archives (in German Archiv, in Spanish archivo, in Italian archivio, in Russian arhiv, etc.) designates 'all documents, whatever their age, format or material composition, that are produced or received by any physical or moral person or by any public or private service or organization in the performance of their activities'.[1]

On the other hand, in the United States and certain other countries that have adopted its terminology, especially Canada, the word archives, in contrast to the word records (translated into Canadian French by the word documents), has taken on the more restricted sense of 'non-current records preserved, with or without selection, by those responsible for their creation or by their successors in function for their own use or by an appropriate archive because of their archival value'.[2]

It should be clearly specified, then, that throughout the present study the usual 'European' meaning of the word archives is being used. In other words, it is equivalent not only to the American archives, but also to the American records, defined as 'recorded information, regardless of form or medium, created, received and maintained by an agency, institution, organization or individual in pursuance of its legal obligations or in the transaction of business'.[3]

Nevertheless since access to documents is in practice and sometimes even under law, closely linked to their actual existence in an archives repository, a distinction will be made, when required, between archives contained in a repository (archives, as used in the United States) and administrative documents (records).

In the language of the archivists of the nineteenth and early twentieth centuries, the word archives often designated solely documents of public origin, or at least documents created by established institutions such as courts, churches, and universities, to the exclusion of private and family papers, personal correspondence and the like. This distinction continues to exist in the United States where papers of personal and family origin are usually grouped under the term manuscripts. In all other countries the word archives is now used for documents of both private and public origin, although their legal status is obviously different. This distinction will be made in the present study by differentiating, when required, public archives and private archives.

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1. Translation of the French definition of archives. International Council on Archives Dictionnaire international de terminologie archivistique, in the process of publication.
2. Ibid. English definition of the word archives.
3. Ibid., English definition of the word records.

In conformity with the now universally accepted definition, the word archives is applied to all physical forms of documents, whether traditional ('textual') documents; pictorial documents; cartographic documents; photographic documents, including films and mircofilms; sound documents; and 'machine-readable' documents (i.e. produced/used by computers).

1.1.2 Access to archives before the nineteenth century

Now that a clear definition has been made of the word archives, a brief study is now required regarding access to them.

Obviously, if archive documents have been carefully preserved since the origins of writing in civilizations geographically and chronologically so far apart as Pharaonic Egypt, Sumer, China and India, it is because they had to be consulted occasionally, and therefore had to be accessible. But, we may ask, to whom and under what circumstances?

As far as is known, access to the archive repositories constituted by kings and priests in ancient times was limited strictly to the officials responsible for their preservation or to those who had received specific permission from the supreme authority. Actually, the preservation of archives has always been linked to the exercise of power, since the possession of memory is essential to governing and administering. Accessibility to archives was therefore a privilege, not a right. Consequently, in ancient times the office of archivist was always considered to be a high level post close to the ruling authority. In the Chinese, Caliphal and Byzantine empire the 'guardian of the imperial archives', whatever his real title, was actually a minister with important responsibilities. Often, as in ancient Egypt, Mesopotamia and China, the preservation of archives was even considered to be of a religious nature, since the destiny of mankind was conceived of as the never-ending repetition of chronological cycles in which only knowledge of the past made it possible to understand evolution and to control renewal. It is understandable, then, that the use of archives was protected against any form of indiscretion or hostile curiosity.

Despite the gaps in our knowledge in this field, it seems that the idea of opening archives to non-official researchers is closely linked to the birth of the idea of democracy, that is, to the Athens of the fourth century B.C. Litigants at law were permitted to seek documents in official archives to support their cases. Likewise, when elected magistrates were accused of treason or of violating the laws, the conservator of the archives was called upon to furnish the documents relating to the matter.

The example of Athens, however, continued to be an exception and was practically unique for long centuries after. Neither in the kingdoms or empires of the East and Far East nor in Rome or in the Europe of the Middle Ages--whether in the Latin or Greek worlds--was access to archives possible to other than privileged persons or the owners of the archives themselves. The monks who wrote the annals of monasteries and the chroniclers appointed by kings and princes to set down accounts of their reigns could, of course, consult documents in the archives, but this was only an exception and in no case constituted a right: in fact, the use of the archives for the preparation of historical works was only one aspect of their use for practical purposes, since history itself was conceived of as an accessory in maintaining sway over bodies and souls.

At the same time as historical criticism appeared in the fifteenth and sixteenth centuries, European historians began to show interest in original documents, which by this time were no longer copied or summarized, but also criticized. The Protestants

in particular, in their zeal to root out false traditions within the Catholic Church, made extensive use of the documents preserved in the archives of abbeys and bishoprics to support their theses, which they then passed through the sieve of diplomatic scrutiny codified in 1681 by Mabillon in his celebrated treatise entitled De Re Diplomatica.

From that time on a sort of silent duel began between the historians, eager to gain access to archives, and the owners of archives, increasingly reluctant to reveal to public curiosity documents, many of which had established real or alleged traditions, rights and privileges. The demonstration by Lorenzo Valla, as soon as 1440, of the falsity of the 'Donation of Constantine', which constituted the supposed legal basis for the temporal power of the popes, thereafter prompted all owners of charters to caution. Mabillon's own correspondence, despite the fact that he was a Benedictine, and that of other great scholars of his time shows how difficult it was even for scholars of international renown to obtain access to abbey charter rooms. More strictly still, access to the charter rooms of feudal lords was reserved to genealogists appointed by their owners.

An analogous situation existed in respect of the archives of governments and large public institutions. Access to these archives, although occasionally granted to historians, was a privilege that princes were free to grant or to refuse at will and without justification. Furthermore, those receiving such authorizations were not permitted to publish the results of their research except with the consent of the authorities. In the middle of the eighteenth century, Voltaire--known, it is true, for his irreverent wit--was refused access to certain archives dating back to the era of Louis XIV. Other archives of primary historical importance, for example, the archives of the Vatican and Venice, were totally inaccessible.

It was precisely during the eighteenth century, however, that a great intellectual change came about that led to, among other consequences, the gradual opening of archives to research in the following century. It was the birth--or rather the rebirth--of the idea of democracy, according to which sovereignty is derived from the people, and the people, consequently, have the right to control the action of the leaders they have chosen to govern them under a 'social contract' (J.-J. Rouseau, Du Contrat social, 1762). Voltaire, for his part, claimed, on behalf of natural freedom, the right of criticism and therefore of knowledge.

At the same time, the idea evolved that justice should be 'transparent', and particularly that defendants should have access to the evidence of their accusers (Cesare Beccaria, Dei delitti e delle pene, 1764)--the first departure from the principle of absolute secrecy of judicial archives that had been inherited from Roman criminal procedure.

These intellectual innovations culminated with the French Revolution, which, under the law enacted on 7 Messidor year II (25 June 1794), proclaimed that documents from the 'national archives'--which means, according to the terminology of the times, the archives belonging to the Nation, including governmental, administrative, judiciary and ecclesiastical archives--were to be accessible freely and without cost to all 'citizens' requesting such services.

The abrupt sweep from the principle of secrecy to the principle of total freedom was but short-lived, as it had occurred prematurely. In 1856 in France itself the regulations of the National Archives empowered the Director to 'authorize or refuse access' to documents on the basis of whether such communication caused 'administrative difficulties', a situation which constituted, for all practical purposes a return to arbitrariness.

1.1.3 Access to archives during the nineteenth century and up to the Second World War

During the same period, the strides made in the field of historical studies during the nineteenth century, which was called 'the century of history', led to a gradual opening of public archives in all the countries of Europe and those of European culture, though not without exceptions, reluctance and delays depending on the countries involved and the extent of their liberalism. At the end of the century many countries had not yet established regulations for access to their archives, so that each request was submitted individually to the authorities, who decided on a case-by-case basis whether access would be granted. This was true, for example, in Austria, Bavaria, Denmark, Prussia, Russia, Saxony and Turkey.

The nineteenth century was marked throughout Europe by the abrupt disappearance of feudal power and the replacement of ancient medieval institutions by modern institutions, a phenomenon known by Marxist historians as the passing of the 'feudal' age into the 'bourgeois' age. The archives of the institutions that were eliminated or transformed in this manner were then transferred to national archives repositories and could no longer be considered as 'conservatories of privileges'.

Some countries--England, Belgium, France, Italy, and the Netherlands, for example--acknowledged the principle of free access to archives under certain conditions and within certain limits. Nevertheless, a long time was still to pass before all archives were accessible to all researchers.

Many categories of archives remained closed, either because they were considered as private property and therefore immune to the regulations governing public archives, which was the case, among others, in many countries regarding ecclesiastical archives; or because they were considered to be too confidential for political or juridical reasons to be opened to public curiosity, as in the case of the archives of reigning houses, and of judiciary, diplomatic and military archives.

Everywhere, long periods of 50 or 60 years or more passed before access to documents was authorized. Certain unusually less liberal countries continued to require personal authorization for access to public archives, as in the case of Imperial Russia and Ottoman Turkey.

Nevertheless, the idea that archives formed the basis for historical studies and that states were duty-bound to open them to researchers was henceforth quite universally accepted in countries of European culture.

In bringing about the fall of the Austro-Hungarian, Russian and Ottoman Empires, the First World War facilitated access to archives in many countries. Little by little the use of archives repositories increased, so that by the eve of the Second World War countries which did not acknowledge the principle of accessibility to their archives by researchers were rare, at least in theory.

Nevertheless, many obstacles--legal, psychological and material--subsisted to impede greater liberalization. Behind the apparent liberalism expressed in laws and regulations, in reality many governments and directors of archives services practised a restrictive policy by increasing the exceptions to the right of access to documents by annoyingly requiring researchers to identify themselves properly and to justify their reasons for asking to consult the documents. Almost everywhere, the right to access to archives was reserved for the citizens of the country, and foreign researchers were obliged to obtain special authorizations.

Nowhere, with the sole exception of Sweden, was the right of access to archives explicity linked to the exercise of democratic rights. In other words, laws and regulations were formulated exclusively to facilitate historical and scholarly

research using documents from the past, but never to provide the public with information on recent or current governmental or administrative procedures.

1.1.4 Developments since the Second World War

The entire evolution of access to archives since the Second World War, which is the subject of the present study and which is far from coming to an end, has been characterized by a trend towards ever-increasing opening of archives repositories to the public.

Many elements have played and continue to play a role in this evolution:

The shift in emphasis of historical studies, which tend to deal increasingly with recent and even very recent times, to the extent that the study of contemporary history tends to become confused with political science, sociology and political economics, and therefore leads to the demand by historians of more and more recent and more and more varied documents. In this respect, the publication of the German archives seized by the American armies aided not only in delineating the responsibility of the Nazis for the beginning and continuation of the war, but also in arousing the desire of historians to have access to documents of recent history. Journalists, too, with their often unofficial sources of information, provide serious competition to historians as such, who are more dependent on public archives.

The development of quantitative methods--in demographic and economic history, for example--which require consulting large quantities of documents to extract statistical information.

The increasing interest in the economic and social aspects of history and consequently in the archives of business enterprises, associations and trade unions, which were previously little known and not often used by researchers.

The ease of international and intercontinental relations, which has brought about frequent travel of researchers from one country to another and has brought up the crucial question of access of foreign researchers to archives.

The independence of many countries of Africa, Asia, Oceania and the Caribbean and all its ensuing consequences with respect to archives: problems such as those concerning the transfer of archives between newly independent countries and former colonial powers, or between countries formerly dependent on a single colonial power, and those relating to laws and regulations on archives to be prepared in the new countries.

The gradual emergence, particularly since the 1960s, of the explicit notion of 'the right to information', at least in the Western countries, which has brought about new demands for accessibility to documents, now no longer considered from the standpoint of historical or scientific research but rather as a democratic right of all citizens.

Generally speaking, the expansion of historical studies (it was referred to as 'explosion' during the 1950s and 1960s) has brought about a very rapid increase in the handling of documents in archives and a consequent accelerated deterioration of documents with very serious danger of actual destruction of the most fragile ones.

Lastly, the extremely rapid progress of technology since the 1950s has had many effects on archives and their accessibility: microfilm and the duplication of copies of documents, which makes it possible to consult them remotely without the need to move the originals; audio-visual techniques and

the appearance of new kinds of documents whose consultation poses new technical and legal problems; and, most particularly, data processing and the production of documents to be read exclusively 'by machine' which are thoroughly overturning all regulations and customs relating to access to archives.

Faced with these requirements and restrictions, archivists have reacted very quickly in adapting their regulations and work methods to the new conditions. The International Council on Archives, established in 1948, has played an outstanding role in this respect. Article 2 of the Council's constitution includes among its general objectives that of facilitating 'the more frequent use of archive repositories and the effective and impartial study of archival documents by making their contents more widely known and by encouraging greater ease of access to archive repositories'. In 1959, the International Conference of the Round Table on Archives devoted its meeting in Lisbon to a study of the situation regarding accessibility to archives in different countries. In 1966, a special international congress was organized in Washington on the theme 'The Opening of Archives to Research'. In conformity with the goals of Unesco, many recommendations have been made by the International Council on Archives, to remove legal or other obstacles that hinder access by the public to archives. Meetings of experts have been organized on this subject and many studies have been published.

Spectacular progress has indeed been achieved. In a great many countries, 'closed' periods for access to documents have been reduced, new categories of documents have been made available for research, and various facilities have been provided for researchers and even for the merely curious.

There is, however, a long way to go before all the documentation contained in the archives becomes accessible to everyone. The liberalism and efficiency of laws and regulations vary from country to country. There are legal, juridical and sometimes even constitutional obstacles to overcome. The material facilities provided for researchers differ considerably from one country to another. As matters stand at present, it can even be asserted that there is no longer even complete consensus among archivists in support of the systematic opening of archives to the public, because of the risk of jeopardizing the material preservation of the documents.

These are the problems we are going to tackle in the course of this study.

1.2 Conflicting principles: the right of access to archives and resultant legal and practical obstacles

In the world today, there are few countries which do not recognize, at least theoretically, some kind of right of access to public archives. However, not only is this right not formulated with the same clarity or precision in all countries; it is also implemented in widely differing ways, with official or unofficial restrictions which in certain cases, may actually go as far as restricting access to the archives to 'authorized persons', in other words, withholding this right from the general public.

The various legal, psychological and political aspects of these questions will be examined below. Nevertheless, brief mention should be made here of the obstacles hindering complete access to archives.

Jurists confronted with the 'right to information', may invoke various principles set out in national and international laws:

the citizens' right to respect for their privacy;

the need to protect the security of the states and their multi- or bilateral relations;

the need to protect public order and the safety of citizens; and particularly, to bring wrongdoers to justice and to prevent them from doing harm;

the need to protect intellectual property;

the need to protect industrial and commercial secrets;

as far as private archives are concerned, the right to the free use of private property by the owners.

To these may be added the following practical obstacles:

the need to keep archival documents in a satisfactory physical condition; they should therefore not be handled excessively;

limitations on the funds and personnel which would make it possible to duplicate documents in order to protect the originals;

the problem of providing all documents with descriptive finding aids (inventories, lists, indexes, etc.) that are detailed enough to inform all the persons concerned of their existence and what they contain.

restrictions of the opening days and times of reading rooms in archive offices, the restricted space in such rooms, and the inadequate number of employees to serve documents to the readers.

Furthermore, the accessibility of certain categories of documents is hindered by specific obstacles:

for audio-visual documents,[1] consultation requires the use of machines (projectors, viewers, tape-recorders, video tape-recorders, etc.) some of which are expensive and difficult to use;

for machine-readable documents, the need to use a computer to consult them raises especially delicate legal and practical problems, which have by no means been settled to date.

Lastly, for the large number of documents which have not yet been transferred to an archive repository, and which remain in the departments or establishments which created them, the most usual obstacles to access to the public are--apart from sheer ignorance of the laws and regulations in this domain and the implicit or explicit reluctance to implement them--material difficulties (premises, security), which are particularly acute in those departments whose primary concern is not the communication of archives.

1.3 Archives and research: trends in present historical research

Among the applicants for access to archives, scholars, primarily historians, make up by far the largest and [illegible] category. We have already seen how, from the eighteenth century onwards, the opening of archives has first of all operated in favour of historians. In [illegible] countries, even today, 'scientific' or 'academic' researchers have privileged access to archives, compared with the general public.

We will consider below whether such preferential treatment for academic researchers is justified; but it is important to show here how archives are affected by trends in current historical research, since these trends have considerably altered relations between archivists and researchers, which is a cause for serious concern for both groups.

1. For the meaning of this term, see below, Section 5-1.

A considerable number of historians have tried, in the last twenty or thirty years, to define the epistemological evolution of their discipline. Several years ago, Professor Geoffrey Barraclough compiled a very detailed survey as part of the study conducted for Unesco on the social sciences (Main trends of research in the social and human sciences, part 2: Anthropological and historical sciences, aesthetics and the science of art, legal science, philosophy, Unesco 1978).

The same theme, in relation to archives, was the subject of a statistical study embracing 11 countries, carried out in 1980 for the 9th International Congress on Archives (M. Roper: 'The Academic Use of Archives', published in volume 29 of Archivum).

These studies reveal that the main characteristics of current historical research--or at least those which have a direct impact on the demand for access to archives--are as follows:

The growing number of studies concerning recent and sometimes very recent history: in 1977-1978, 57.9 per cent of researchers at the Public Record Office in England consulted twentieth century documents (as against 12.4 per cent in 1962-1964). The same phenomenon may be observed, to an even greater degree, in other archive repositories in various countries in the world: the United States, France, the USSR and so on.

The increasing interest in economic and social history (13.8 per cent of documents consulted at the Public Record Office in 1962-1964; 21.8 per cent in 1977-1978).

The emergence and development of new fields of historical research: the history of morals, the history of mental attitudes, the history of food, the history of health, the history of teaching, demographic history, etc., which require new categories of sources or examine the traditional sources in a new way.

The introduction into historical research work, under the influence, among others, of the so-called 'Annales' school in France, of methods of quantitative analysis and statistical sampling which entail the use of a computer and, parallel to this, the systematic analysis of huge quantities of serial documents, hardly used until then in the archives, such as account books, budgets, registers of births, marriages and deaths, tax records, wills, marriage settlements, and so on.

Lastly, mention should be made of the considerable importance of the new professional organization of historical research, which is increasingly carried out by researchers working in teams, usually students under the direction of a professor, while the contribution of 'individual' researchers is constantly diminishing in comparison. It is, obviously, the existence of these research teams--almost invariably funded by public authorities or by the specialized institutions, universities, institutes, academies, etc.--which makes it possible to set up the numerical data bases which characterize 'quantitative history', and which accounts for the spectacular increase in the consultation of archival documents in the last 30 years: 9,600 items consulted in the French National Archives in 1955, more than 170,000 in 1980--that is, an increase by a factor of 17.7 in 25 years.

One should also note, as Mr Roper did in his 1980 study mentioned above, that despite the current vogue for academic studies of economic and social history, political history (in the broad sense of the term) and, more generally, 'factual' history, are still widely studied. They are still undoubtedly favoured by the majority of non-specialist readers, as is indicated by the vogue for popular history

magazines, the number of which is growing. Now it is precisely in this area that interest in contemporary history is most noticeable: more than half the history books currently published in Western Europe deal with post-1930 history. This accounts for the size of the demand for recent documents.

1.4 The general public and access to archives

Lastly, there is the emergence of a new phenomenon in many countries: the curiosity of the general public about archives and, more generally, historical documents.

By 'general public', we mean here all those who are neither professional nor amateur historians, nor students, nor interested in archives for professional reasons: what is called, to use an expression which is both familiar and pleasant, 'the man in the street'.

The attraction of the past, the wish to retrace (even superficially) family or ethnic 'roots', sometimes sheer curiosity, account for this influx of visitors to exhibitions and museums of historical documents, the latter being regarded not only as conveying information about the past, but as 'objects' in the same way as old jewels, a sculpture or a flint tool.

This fresh curiosity about the past has given rise, in several western countries, to an extraordinary vogue for genealogical research, which has become--with the increase in leisure time--the favorite pastime of tens of thousands of people. This vogue has, in its turn, led to the proliferation of associations, specialized reviews, and handbooks, containing information of varying accuracy. The proportion of requests to consult documents for genealogical research has reached, in certain archive repositories in France and other countries, the alarming level of 75 and even 80 per cent of all requests. This is particularly worrying for, while it is obviously desirable that access to archives should be made as wide as possible, this type of research, which concerns a limited number of categories of documents (birth, marriage and death certificates, notarial deeds, census lists, military recruitment records, etc.), jeopardizes the physical condition of the documents. This is a point which cannot be passed over in silence in a study on the accessibility of archives.

Archivists, admittedly, are not, in general, overly sympathetic to this new aspect of the wishes and demands of the general public. They are, in most countries, more used (owing to their particular intellectual training) to the research of historians, who make up the bulk of their 'clientele'. We cannot, however, ignore this present trend towards opening up the archives beyond the traditional scholarly public. Archive museums, exhibitions of documents and non-specialist publications should also be taken into consideration as part of the notion of 'access to archives', even though this may require a fresh effort on the part of many archivists.

Furthermore, there has been an observable increase, both inside archive institutions and outside, in the number of associations and groups dedicated to easing access to archives for interested members of the general public. This aspect of 'public awareness' of archives was the subject of interesting discussions at the ninth international congress on archives (London, 1980), following the report of Mrs Claire Berche on 'Archives and the general public' (Archivum, Vol. 29).

2. Access to archives: The right to information and its limits

2.1 The notion of 'right to information'

2.1.1 The origin of the notion of 'right to information'

The question of the accessibility of archives has been subjected to a considerable change--perhaps the most important one, from the legal point of view, since the origin of archives--with the recent emergence of the notion of the 'right to information', access to the archives being no longer considered a privilege, nor a service demanded by historians for their research, but a right guaranteed by the law for all citizens. This right, nevertheless, 'is a newcomer to the family of human rights', observes the jurist Jean Rivero. It might be thought that it is a natural consequence of the right to freedom of belief and freedom of expression, guaranteed by the French Declaration of the Rights of Man and of the Citizen of 1789 and by the Bill of Rights of the United States of 1791. But it was by no means explicit in this sense in either of these texts, nor in the other constitutions or laws of the nineteenth century and the first half of the twentieth century. Thus, the Constitution of the Argentine Republic of 1853 asserts the right of 'publishing /their/ ideas ... without previous censorship ... of teaching and learning', but access to information is not mentioned as such.

The right of access to public archives may also be assimilated to the notion of freedom of the press. It is in this form that it appears, from 1766 onwards, in the Constitution of the Kingdom of Sweden nowadays set out in the following manner: 'To further free interchange of opinions and enlightenment of the public, every Swedish national shall have free access to official documents ...'.

The French law of 25 June 1794 (7 messidor year II), in laying down the principle that all citizens should be able freely to obtain communication of documents in the 'national archives', was more particularly aimed at the need for citizens to learn the extent of their rights, particularly with regard to the suppression of feudal rights and the sale of estates nationalized by the revolutionary laws.

Lastly, the right of access to public archives might also be inferred from the right of citizens to scrutinize acts of public servants, as it is set out in the Declaration of the Rights of Man and the Citizen of 1789, Article 15: 'every public agent is under the obligation to give an account of his administration'.

Nevertheless, it was only after the Second World War that the right to free and unlimited information was explicitly set out with particular solemnity, in the Universal Declaration of Human Rights adopted by the United Nations Organization in 1948: 'right to seek, receive and impart information and ideas regardless of frontiers ...' (Art. 19).

In a slightly different spirit, but just as clearly, Pope John XXIII stated in 1963 in the encyclical Pacem in Terris: 'Every human being has the right ... to freedom in searching for truth ... within the limits laid down by the moral order and the public good. And he has the right to be informed truthfully about public events'.

The conclusions of these principles on access to archives were immediately drawn by the International Council on Archives in the constitution adopted upon its foundation in 1948: 'encouraging greater ease of access to archive repositories' is one of the 'general objectives' set out in Article 2.

2.1.2 Modern laws on freedom of access to information

Like many principles, that of right of access to official documents was for a long time very imperfectly implemented. 'Administrative secrecy' just as much and perhaps more than the concern to protect the private life of citizens, almost everywhere impeded access to the most recent documents and, in particular, to those that had not yet been transferred to the public archive repositories.

Admittedly, the constitution of certain states affirmed the principle of free access to administrative documents (thus the Constitution of Costa Rica of 1949, Article 30: 'free access to administrative departments is guaranteed, for purposes of information on matters of public interest. State secrets are excluded from this provision'); but in the absence of practical measures to implement it, this prinicple remained, more often than not, a dead letter.

Finland, a country where the Swedish liberal tradition has been alive since the eighteenth century, was the first after the Second World War to adopt as specific law to guarantee 'public access to documents of a general nature' (law of 9 February 1951). This law lays down the principle that documents of a general character drafted or received by government authorities should be accessible to all Finish citizens without time restrictions, and lists the cases in which the government may, by decree, declare that certain files are exempted from this unlimited availability. Thus the notion of accessibility was, for the first time (if the Swedish law of 1766 is excepted), effectively separated from the notion of archive repositories. This constituted an authentic revolution in practice if not in theory.

Thanks to its exemplary value, the United States law of 1966 (The Freedom of Information Act, amended in 1974-1975: 5 U.S. Code 552) is of particular significance in the development of the theory of the accessibility of public documents.

It is based on the principle that 'a democracy works best when the people have all the information that the security of the nation permits' (Memorandum of the Attorney General, 1967). To this end, it specifies which documents are legally required to be communicated on demand, together with those which must be published in the Federal Register. Conversely, it sets out in great detail which documents are, for some reason, excluded from free accessibility (we will examine these exceptions below). Lastly, it establishes the procedures for requests for access, refusal of access, appeals in case of refusal, etc.

Nowhere in this law is the word archives used. The scope of this law is thus quite clearly different from the traditional scope of laws on archives, which essentially consider documents as sources for research into the past. The Freedom of Information Act is concerned with documents from the moment they come into being. It is an administrative law and not a law on archives. Its consequences for archive depositories are a side effect, not a direct aim.

The practical application of the Freedom of Information Act of 1966 brought to light certain shortcomings in the original text, in particular as regards the time taken to make requested information available. The 1974-1975 amendment put this right.

In various Western countries, press campaigns and currents of opinion called for the adoption of laws modelled on the American Freedom of Information Act of 1966. In 1967, Norway adopted a law on public administration (10 February 1967) regulating access to certain administrative documents. The law of 19 June 1970 on the freedom of information established, as in Sweden and in Finland, the principle of free access to administrative documents, with certain exceptions for reasons of national security, the protection of the interests of justice and private citizens.

France followed this example with the law of 17 July 1978 (amended on 11 July 1979), the first part of which is headed 'Freedom of Access to Administrative Documents'. Although naturally different in form, owing to the differences between the countries in their legal traditions, the French law is fairly close, both in spirit and its provisions, to the American and Norwegian laws. Like the latter, it lays down the principle of the right to information and, consequently, freedom of access to administrative documents, which are defined in detail. It regulates the practical conditions for issuing and handing over photocopies and enumerates (Article 6) the categories of documents which are excepted from freedom of access. Lastly, it makes provision for appeal in cases of dispute. The Netherlands also adopted, on 9 November 1978, a law of the same type on access to administrative documents.

Australia adopted in 1982 a Freedom of Information Act of the same type as the American law of 1966 bearing the same title.

As for Canada (federal legislation), as the result of several years of study and discussion, it has had since 1982 an 'Access to Information Act' and a 'Privacy Act'. (29-30-31 Eliz. II, Cahp. 111), which, with their annexes, make up one of the most detailed texts existing in this field at present. The 'right to ... access to any record under the control of a government institution' is recognized for all Canadian citizens and permanent residents, and the list of categories of documents excluded from this free access takes up no fewer than seventeen articles.

2.2 Principles and legal procedure for access to official documents

A common characteristic of the Swedish, Finish, American, French, Norwegian, Dutch, Australian and Canadian laws on access to official documents is that they establish the principle of the right of access to documents without restriction of date, non-accessible documents being regarded as exceptions, and listed restrictively. This is hence a complete reversal of traditional legislation, which, on the contrary, considered temporary non-accessibility as the rule, with certain exceptions.

Access is legally guaranteed, wherever the documents are kept, whether in an archive repository or a government office: this is also a significant innovation.

The regulations laid down for requesting access to documents are set out in varying detail in the laws on freedom of access. In France, they were the subject of a special decree issued in application of the law (Decree of 6 September 1978).

The eight laws under consideration vary in degree of detail and precision as to the enumeration of documents which are exempted from free access; this is, as might have been expected, precisely the point which gives rise to most disputes.

In the United States and in Australia, disputes in cases of unjustified refusal of access are heard by courts: 'District Courts' in the United States, without excluding the possibility of administrative sanctions being meted out by the 'Civil Service Commission'; 'Administrative Appeals Tribunals' in Australia. In Finland, disputes are heard by the Supreme Administrative Court. In France and Norway, on the other hand, the first level of jurisdiction is a special commission: 'Commission on Access to Administrative Documents' for France, 'Commission on Official Secrets and Research' for Norway; cases do not come before the courts unless the administration refuses to adopt the findings of the commission. In Canada, it is the 'Information Commissioner', appointed by the Governor in Council, with the agreement of the Senate and the House of Commons, who is responsible for examining disputes concerning the application of the law on the access to information; these decisions may be reviewed by the Federal Court.

In the United States, the application of the Freedom of Information Act has involved considerable expense and--by general agreement--a number of abuses: it is, in effect, very difficult--since access to documents is defined as a right--to prevent the inquisitive, or even the malicious, from demanding access to hundreds or thousands of documents without having to justify their requests. In the same way, the right to delivery of photocopies, imprudently incorporated into the American and French laws, has overloaded photocopying services with work. In the United States, the Federal Bureau of Investigation (the foremost victim of the Freedom of Information Act) was obliged, in 1981, to employ 300 people solely to meet requests for access to documents, at an annual cost of $10,000,000.

For this reason, the Attorney General, William F. Smith, announced in 1981 that a thorough review of the Freedom of Information Act had become necessary, since experience showed that too many people used it 'in ways that Congress did not intend'. Hence a bill was introduced in 1981 by the Republican senator Orrin G. Hatch, proposing considerable restrictions on the liberalism of the 1966-1974/1975 law.

In France, the law of 1978 has apparently given rise to fewer abuses; it has, admittedly, had a more limited impact on public opinion, and many citizens remain unaware of its existence, despite the publicity it was given. The tradition of 'open government' is certainly less deeply rooted in France than in the United States or the Scandinavian countries.

In an ideal world, it would of course be desirable that laws like the 'Freedom of Information Act' or the 'Law on Freedom on Access to Administrative Documents' should be adopted in all countries. In practice, however, it is obvious that they can only hope to be effectively implemented if they fit in with a tradition of liberal government, which by no means exists everywhere. In the absence of such a background, they are likely to become mere window dressing and texts without any real effect. One could cite several countries with a dictatorial type of government, where civil liberties are more or less ignored, and where the laws proclaim freedom of access to information: the slightest first hand experience shows that this freedom exists only on paper.

Furthermore, even in countries with a liberal government and civil service, the principle of complete freedom of access to official documents is not universally accepted. The Attorney General of the United States, William F. Smith, has observed that some holders of information which they regard as confidential hesitate to pass it on to the administration, fearing that the Freedom of Information Act will expose the information to public curiosity. As the French historian Robert-Henri Bautier has remarked, fear of leaks is increasingly leading those involved in public life to deal with such matters in personal meetings or in telephone conversations (the latter being themselves exposed to the risk of eavesdropping).

But the reticence of some people with regard to the free communication of administrative documents is also based upon legal arguments.

For example, any file containing letters from a private individual (even if the letter was not sent under the explicit condition of secrecy) raises the problem of obtaining permission from the writer. A private individual has not the right to publish a letter he has received without the agreement of the person who wrote it. Why should the state have such a right? (R.-H. Bautier, International Congress on Archives, Washington 1966).

All citizens are entitled to secrecy for their private lives, including their professional activities. Is the government employee alone in not benefiting from this right?

(Gordon Robertson, 'Confidentiality in government', in Archivaria, 6, 1978, p.3.) It should nevertheless be recorded that this, the view of Mr Robertson, former secretary to the Canadian Cabinet, was not shared by the government of his country, the Canadian law on access to information being finally approved and promulgated in 1982.

These observations do not, of course, cast doubt upon the citizens' right to have access to all information directly or indirectly concerning them. Mr Duncan Maclean, the organizer of the campaign for the adoption in England of a 'Freedom of Information Act', justifiably puts forward the example of the citizens' right to have cognizance of documents concerning road safety, nuclear risks, harmful materials used in industry etc. More such examples could be given. All democratic countries should of course have laws guaranteeing access to this type of document. Opinion is, however, divided as to the wisdom of extending this freedom of access to all official documents.

No doubt the wisest solution would be that laws such as the 'Freedom of Information Act' should list the categories of information for which free access should be guaranteed, instead of confining themselves, as is the case at present, to listing those which are exempted from such free access.

2.3 The system of accessibility linked to the transfer of documents to public archive repositories

In a number of countries, documents are defined as freely accessible as soon as they have been transferred to a public archive repository. In other words, in these countries, all documents kept in public archives repositories are theoretically freely accessible, apart from the restrictively listed exceptions. These countries include Bulgaria, Costa Rica, the Dominican Republic, Israel, Italy, Japan, the Grand Duchy of Luxembourg, the Netherlands, New Zealand, Norway, Panama, Portugal, the Republic of San Marino, Spain and the USSR.

In these countries, it is thus the statutory time-limit for transferring documents to the public archives that determines (with the exception of special provisions for certain categories of documents) their accessibility. The limit is fifty years in the Netherlands, forty-years in Italy, thirty years in Costa Rica, the Dominican Republic and Japan, twenty-five years in New Zealand, Norway and Spain. In many countries (such as Bulgaria and the USSR) the law lays down no time-limit for transfer, but there are special regulations for each category of documents.

Linking the notion of accessibility to that of transfer to the public archive repositories naturally facilitates the work of archivists, who do not have to worry whether such and such a document in their repositories is available for the public or not. There is nevertheless a risk, if the regulations concerning time-limits for transfer are not strictly observed, that many documents, which may be among the most interesting, will not become accessible for researchers.

The fact is that in these countries, no law or rule requires any government department or service to make its files accessible, even if they are fifty or sixty years old, unless they have been transferred to a public archives repository. Strictly organized records management is therefore an indispensable condition, in such cases for archive accessibility. This cannot be realistically expected in most developing countries, nor even in many others.

2.4 The system of closed periods

In most countries, the system is, instead of linking the communicability of documents to their transfer to a public archive repository, to establish a minimum period after which they become available, wherever they are kept; it has been realized for some time that all documents can be made public, without embarrassing

anyone, when they have reached a certain age. It is rare (except perhaps in the field of international relations) for any kind of document to continue to be confidential or potentially dangerous after a century: those who prepared it are dead and the circumstances which gave rise to it no longer exist.

This is why, at the beginning of the nineteenth century, a considerable number of countries accepted the principle that public documents might be made available on the expiry of a set time-limit, which would vary according to the categories of document. This is the system of 'closed periods', which is today the basis of the system of access to archives in most countries in the world.

The basis of this system is clearly quite different from the principle of freedom of access to information considered above. It is no longer a case of allowing citizens to have access to information concerning current, present-day government, but of allowing researchers (essentially historians) to have access to sources of documentation on the past.

In view of the increasing interest shown by researchers in the study of recent history--a phenomenon to which we have already drawn attention--closed periods have almost everywhere been considerably reduced in the course of the last thirty years. Thirty years ago, restrictions of fifty, sixty and even more years, were common. Today, they are usually thirty years, twenty-five years and even less, although certain countries keep longer time restrictions:

60-year limit: Mauritius;

50-year limit: Principality of Andorra, Czechoslovakia, Denmark, Principality of Lichtenstein, Nigeria, Sudan;

35-year limit: Swiss Federal Archives;

30-year limit: Argentina, Australian Federal Archives, Austrian Federal Archives, Bahamas, France, Federal German Archives, India, Romania, Senegal, South Africa, Sri Lanka, United Kingdom, Zimbabwe, etc.;

25-year limit: Algeria, Cameroon;

20-year limit: Botswana, Hungary, Zambia.

The longest closed period currently in force is that of the Vatican Archives, access to which has been fixed at the date of the death of Leo XIII (1903), that is 80 years.

It is noticeable that France and Australia, which have laws on freedom of access to official documents, still have a closed period of 30 years for access to the archives. This may seem contradictory, but the contradiction is only apparent, since the thirty-year limit is, of course, only applicable to documents which are not already freely accessible from the outset, by virtue of the law on freedom of access to official documents.

The above-mentioned time-limits are general limits which apply to the majority of documents, but not to all. In all countries a number of categories of documents are subject to longer closed periods, which will be examined in detail below. Will the general trend to shortening closed periods, which has been very noticeable since the end of the Second World War, continue in the future?

This is, of course, the wish of historians and journalists. Politicians who, in the name of democracy, champion completely 'open' government, hold that any restriction placed upon the disclosure of public documents is harmful: Mr Wedgwood Ben thus writes: 'Since democracy can be properly described as the institutionalization of a process, which a society can learn from its own experience--and especially by its own mistakes--a 30-year time gap before that experience and those mistakes can

be published in full, must necessarily make that learning process at best ineffective and at worst almost unless' (The Political Quarterly, January-March 1979 p.17). President John F. Kennedy, for his part, recommended that his ministers allow their documents to be consulted after 15 years (W. Kaye Lamb, 'Liberalization of restrictions on access to archives', in Archivum, XVI, 1966, p. 38).

Nevertheless, systematic shortening of closed periods does not meet with universal approval. Many politicians and civil servants hold that too brief closed periods might well inconvenience them in the conduct of government business. Perhaps this is a case of a defence reaction with regard to types of curiosity deemed to be indiscreet (an example of 'administrative paranoia' criticized by several writers), but it cannot be safely ignored. The historian Jacques Freymond, although in favour of the freest possible access to archives, is aware of this risk:

> 'We would not be wise to force open the door through pressure intended to secure from governments a reduction of the closed periods for the opening of archives, since governments would immediately adopt discreet precautionary measures, by not transferring certain documents to the archives, or even by making up files giving the version of their actions which suits them. Politicians and diplomats would shelter from the gaze of the inquisitive by keeping down to the strict minimum written communications, dealing with important affairs verbally ... increasing the pressure would eventually lead to emptying the archives'. ('Une histoire du présent est-elle possible?', in Historiens et Géographes, 287, December 1981, p. 417).

Nor is the situation the same in all countries. In those where there have been no serious political upheavals in the course of the last thirty years, there seems to be no serious objection to lowering the general closed period for archives to 25 or 20 years. On the other hand, in countries which have undergone revolutions, civil wars or military occupations, or serious social or political unrest, free access to documents concerning such events might well lead to denunciation, acts of revenge and the settling of scores.

This does not, of course, mean that documents should be withheld from the police and courts when, for example, war crimes, treason or collaboration with the enemy are being investigated; but uncontrolled public access to such documents before the expiry of the thirty year period would certainly do more harm than good. This is why systematically shortening closed periods appears impossible, and even dangerous in many cases: the safety of individuals must come before satisfying historical curiosity.

2.5 Categories of documents not freely accessible

Whether it is a question of both complete, immediate accessibility in the name of 'Freedom of Information' or closed periods, legislation in all countries recognizes that the time-limit for free communication of certain categories of documents should be longer than for others. It is the enumeration and justification of these exceptions which at present create the most important discrepancies between laws in different countries.

It is unfortunately impossible, precisely because of these discrepancies, to draw an overall comparative picture of all existing legislation in this respect; while in some cases, the categories of restricted access documents are set out in detail, exhaustively and restrictively, in others, they are defined in a general and open-ended way.

Furthermore, the formulation in national laws often makes reference to legal notions peculiar to each country, and which do not quite correspond to those of other countries.

Nevertheless--while making no claims to this being an exhaustive list--we might attempt to classify the main legal restrictions on access to documents into several major categories, which are to be found to a greater or lesser extent in all countries or in the majority of them.

2.5.1 Documents concerning national security and public order

Among the reasons often used to refuse or restrict access to certain categories of documents, the most frequent, also the oldest, is the protection of state interests, particularly national security and public order.

There is no country where these principles are not used to protect certain documents from the less innocent forms of curiosity. Nevertheless, the scope of the resulting restrictions, not to mention their degree of specificity, vary greatly from one country to another.

The formulations used in the laws are in general fairly vague:

'certain series of documentary sources deemed particularly confidential in the interest of internal political life, defence and foreign policy of the state' (Algeria, decree of 20 March 1977, Art. 88 (b));

the documents may be refused 'when the protection of state interests requires it' (German Democratic Republic, Benutzungsordnung, 17 March 1976, para. 7 (1);

'documents relating to matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such an Executive Order'. (United States, Freedom of Information Act, section 2, 6, (b));

'administrative documents, consultation or communication of which would compromise ... the secrecy of the discussions of the government and of agencies deriving their authority from the executive, the secrecy of national defence and foreign policy, currency and public finances, state security and public order' (France, law of 17 July 1978, Art. 6);

'documents of a confidential nature relating to the foreign or domestic policy of the state' (Italy, law of 30 September 1963, Art. 21).

Nevertheless, in some countries, an effort is made to avoid too arbitrary an interpretation of these restrictions; here the categories of documents subject to restricted access are listed, with varying degrees of precision, either in the laws themselves, or in the annexed documents, decrees, regulations, government decisions, etc. Here are some examples:

documents concerning the demarcation of national frontiers (Brazil);

documents designated as confidential by the Commission on External Relations (Colombia);

military documents, documents of the counter-espionage services, minutes of the Council of state (Denmark);

documents from the Ministries of National Defence and External Relations, from the President of the Republic and the Prime Minister, from the national police where they concern state security or national defence, documents having a decisive bearing on financial, monetary commercial negotiations with foreign countries (France);

documents listed in the 'Official Secrets Act' of 1911 (United Kingdom);

documents concerning 'the security of the Realm or its relations to a foreign state or international organization, the central financial policy, the monetary policy, the foreign exchange policy of the Realm, the economic interests of the state or the communities' (Sweden).

The most detailed listing of documents exempted, for whatever reason, from free access is contained in the Canadian law of 1982 on access to information (Article 13-27).

Where there is a statutory closed period for archives, the duration of non-accessibility for documents concerning national security and public order is, almost always, much longer than for ordinary documents. Even here, variations between countries are considerable:

70 years in Cameroon and in Senegal;

60 years in France;

50 years in Algeria ('50 years or more'), Belgium, Israel, Italy, Zaire;

30 years in the Republic of San Marino.

Where documents classified for reasons of national security and public order are subject to particular legal procedures ('classification' in the United States, 'defence secret' in France, 'secret official records' in the United Kingdom, etc.), they must undergo an analogous 'declassification' procedure before they can be made available. The delay before this procedure comes into operation may vary greatly: in England, 'records are supposed to be declassified after a period, but in practice this is often not done and they cannot therefore be produced for researchers' (reply to a questionnaire circulated in preparation of the present study, 1982). The same anomaly may be observed in France, where the archives of the Ministry of External Relations contain documents bearing the stamp 'très secret' and dating from 1940 and even 1930, although they have long since ceased to be of the slightest diplomatic or strategic interest.

In practice, in many countries, documents classified for reasons of national security and public order remain inaccessible for as long as government deems fitting (Brazil, Canadian Public Archives, Chile, Colombia, New Zealand, Sudan, USSR etc.). In such cases, access may only be obtained through individual authorization. This restriction may be applied indefinitely.

It should be noted that, in several countries, the closed period for diplomatic or military documents is fixed at a specific date, marking a major event in the history of the country: 1913 in India, 1919 in Hungary, 1939 in Poland. The date 1940 was for a long time considered, in like manner, the limit for availability in France, but this system was abolished by the law of 3 January 1979.

No one seriously questions the principle of the restriction of access to certain documents for reasons of national security and public order. Neither the most fastidious of liberal democrats nor the most impatient of historians can reasonably expect to be given access to plans for atomic submarines, plans for mobilization in case of war or plan for an anti-terrorist campaign currently in force.

Nevertheless, in some countries, the way in which this principle is interpreted is considered excessive in certain quarters. One example of such opposition (particularly in France, the Federal Republic of Germany and the United States), concerns documents relating to the building of nuclear power stations: the Commission on Access to Administrative Documents, in France, has had on several occasions to investigate disputes concerning this precise point. Is communication of plans for

such power stations to any applicant compatible with national security? Anti-nuclear groups claim that it is; the authorities deny this. This problem is, of course, beyond the scope of archivists.

In the United States, a row broke out in 1974 in connection with the divulgation, in a book by Victor Marchetti and John Marks 'The CIA and the Cult of Intelligence', of documents classified as secret. Several observers consider that these documents did not really concern national security, contrary to the claims of the Central Intelligence Agency, but that the latter was merely seeking to shield itself from criticism for its behaviour and activity during the Viet Nam war (Cristian M. Marwick, 'The curious National Security pendulum: openness and/or censorship', in Library Journal, 15 September 1979).

Similarly, in England in the period 1971-1975, there was a movement of opinion aimed at securing liberalization of the 'Official Secrets Act' of 1911, considered to be excessively restrictive and arbitrary, but up to the present these efforts have not met with success (Peter White, 'Official Secrets and Government openness in Britain', in The Australian Library Journal, 22 February 1980).

2.5.2 Documents concerning privacy

It is just as difficult to reach a precise definition of the notion of 'privacy' as it is for the notion of national security and public order.

Since the end of the eighteenth century, most countries have accepted that citizens are entitled to respect for a number of secrets concerning their personal and family life: secrecy of correspondence, inviolability of one's home, secrecy of political and religious opinions, etc. These provisions appear in most national constitutions currently in force, although they may be waived in case of war or state of emergency and special provision may be made in certain cases, such as the investigation of crimes by the police or other representatives of justice.

Nevertheless, the 'right to privacy', as it is conceived by many theoreticians today, goes well beyond these fairly restrictive definitions. This is a consequence of the enormous increase in intrusion by the state in the private life of citizens, and also of the powerful means of invading privacy made possible by modern techniques of photography, audio-visual equipment and electronics. For these various reasons, in most industrialized western countries, movements of public opinion have been fighting for the last twenty years for the area of 'private life' to be better defined and better protected. In the United States, the Privacy Act of 1974; in France, the Law on Electronic Data and Civil Liberties of 6 January 1978; in Israel, the Privacy Act of 1981; in Canada, the Privacy Act of 1982, contain specific provisions to exempt from public access certain documents whose disclosure would be damaging to private life: but none of these texts (except for the Canadian law of 1982) gives a really thorough definition of 'private life'.

In order to decide which documents should be classified on the grounds of privacy, and in the absence of a universally agreed definition, it is necessary to bring together a number of provisions in laws or regulations scattered in various texts (in which archives as such are rarely mentioned).

We hence arrive at the following list, which does not claim to be exhaustive, but which corresponds fairly closely to the enumeration set out by Professor Jean Rivero in the chapter 'Freedom in private life' in his classic work on civil liberties:

(a) Civil status and filiation (births, marriages, divorces, deaths). In all countries the disclosure of documents relating to civil status is regulated by specific laws. The limit is usually 100 years for birth certificates, sometimes less for marriage certificates and particularly for death certificates. Documents concerning illegitimate births are sometimes given special protection (thus in Denmark, where they are incommunicable in perpetuity).

(b) Health. Documents originating from doctors are protected in all countries by medical professional secrecy. This secrecy is generally extended to all documents concerning the health of a particular individual, even if they did not come from a doctor (documents from hospital administration, social security services, etc.) Here too, the closed period is very long: generally 100 years or 80 years after the birth of the person concerned. In France, the duration is exceptionally long (150 years after birth), in order to protect individuals from the disclosure of hereditary diseases from which their parents or grandparents might have suffered. For the same reason, in Brazil, documents concerning mental diseases are indefinitely non-communicable.

(c) Wealth and income. In liberal societies, information concerning the wealth and income of individuals is, in general, rigorously protected against disclosure. Income-tax officials, solicitors and bank employees are bound by professional secrecy. The duration of the secrecy is sometimes very long (100 years in several countries for solicitors' documents: these, it is true, fairly often concern the private life of families). In France, income-tax files are kept secret for 60 years. But in certain countries--particularly Scandinavian countries--fiscal documents, or at least some of them, are freely accessible. On this particular point, thus, there is no international consensus.

(d) Penal and criminal proceedings. While penal and criminal judgements are public, and the sentences, consequently, freely accessible, this is not the case for the files of judicial proceedings and in particular, evidence from the investigation, of which only the legal authorities and the lawyers may have cognizance. This is why files from penal and criminal proceedings are, in many countries, exempt from free access for periods that are sufficiently long to protect those concerned from the risk of disclosure which would seriously violate their privacy. These periods generally range from 50 to 100 years according to the country.

There is a particular problem in the case of amnestied or pardoned felonies or offences. The legal consequence of an amnesty or pardon is to eradicate completely the memory of the felony or offence, which it is henceforth prohibited even to mention. Logically, the documents concerning these amnestied or pardoned felonies or offences should be kept permanently secret, and even destroyed. In practice, nevertheless, they are generally accessible on expiry of the same period as other documents from penal and criminal proceedings. Since the person concerned is by then dead (especially if the period is 100 years), the damage done by such a disclosure is considerably reduced.

(e) Professional activity. It is almost universally accepted that the professional activity of an individual, and more particularly his relations with his employer, form part of his private life. Hence, all documents concerning such relations are covered by official secrecy, often in application of specific laws. The personal files of civil servants and government employees are kept non-communicable (except for the concerned party himself) at least for the duration of their professional activity,

and often far beyond: 100 years, or even 120 years in France. The reason for these long periods is that the personal files of civil servants contain information on the civil status and documents relating to the health of the persons concerned, and sometimes, documents relating to disciplinary and penal proceedings.

In some countries, the category covering the personal files of civil servants also covers the personal files of students in universities, which indeed contain the same information on civil status, health, discipline and also reports on the intellectual capacity of the person concerned and the quality of his work. The coupling of these two groups should become general everywhere.

Likewise, this category might include the personal files of soldiers and, by extension, military recruitment files and records, which contain a wealth of personal information on the persons concerned.

(f) Political, philosophical and religious opinions. The right of citizens to secrecy for their political, philosophical and religious opinions is generally recognized by legislation in most countries; it also appears in the International Declaration of Human Rights.

Consequently, all documents containing information on these subjects are exempted from free access, at least during the interested parties' lifetime.

(g) Basic statistical documents. Government today produces a category of documents which contain a wealth of information on the private life of the citizens: these are the basic documents (questionnaires, etc.) of statistical investigations: population censuses, economic surveys, inquiries of all kinds. They contain information on the civil status, health, professional life, cultural level, property and income, and even (although this is illegal in many countries) on the political, philosophical and religious opinions of the individuals.

For this reason, basic statistical documents are given special protection against disclosure. In most countries, special laws exist in order to regulate access and use strictly.

Since the documents in question are almost always now prepared or used in punch card or electronic form, we shall examine this question below, in the paragraph entitled 'Machine-readable documents'.

(h) A moot point: the notion of 'family honour'. Most old laws on the access to archives include provisions to protect 'family honour', and many of them continue to exist, especially in archive legislation in Latin America.

It must be recalled, however, that the notion of 'family honour' is extremely difficult to define precisely and that it may be used in a thoroughly arbitrary manner as a pretext for refusing access to certain documents regardless of their dates. The negative consequences of revealing an illegitimate birth, for example, may affect the descendants of a family several generations later. Likewise, the disclosure of an impropriety committed in the past can be seriously damaging to the perpetrator's descendants and family even long after his death. For example, the career of a politician may be jeopardized if the electorate discovers that his father committed dishonest acts as a civil servant or public magistrate, even if they occurred forty or fifty years before.

In many countries, the law expressly states that the notion of protecting private life includes not only living persons but also the memory of the dead and their families.

Nevertheless, in order to avoid abuse and arbitrariness, it appears essential to establish time-limits in this respect. In France, according to the law of 3 January 1979, even hereditary diseases can be revealed after 150 years' time, the longest known period of secrecy in the world. One might imagine that after 100 or 120 years no revelation whatsoever could really pose a threat to anyone's private life. The law is not designed to protect the reputation of dead people, for that falls within the scope of history, not law. No law or regulation should make it possible to refuse public access to documents 100, 120 or perhaps 150 years old in the case of documents specifically dealing with certain hereditary diseases.

(Generally speaking, time-limits are calculated from the date of birth of the persons concerned. In Canada a time-limit has been established of 20 years after the date of death. This system has evident drawbacks, since although all individual documents bear the date of birth of those concerned, their date of death rarely appears!)

The idea of 'family honour', which is completely vague and subjective, should be eliminated from laws on the communicability of archives. Only lists of non-accessible documents bearing an indication of the time-limit of non-accessibility can avoid arbitrariness in this area. In this respect it should not be forgotten that penal and criminal judgements are generally published in the press, in addition to a great deal of information on police investigations and on most crimes and offences. Could the mere reading of newspapers therefore be considered a threat to the honour of the descendants of the persons named therein? It hardly appears likely.

(i) Police documents. Of all administrative documents, those that most closely affect the private lives of citizens are obviously police documents.

This consideration extends beyond the scope of the present study, since in many countries it is not only communicability but also the very nature of such documents which is legally contested. In particular, the Federal Republic of Germany, the United States, France and Italy have been the scene for some twenty years now of legal debates and press campaigns that question the legality of certain police investigations and certain files or records kept by the police. Only recently, a parlimentary inquiry was made in Canada on the files of the Canadian Royal Mounted Police, which maintained information prohibited by law on the private life of citizens. These files were ordered destroyed (Freedom and Security under the Law: Second Report of the Commission of Inquiry on Certain Activities of the Canadian Royal Mounted Police, Ottawa, August 1981). Questions of the same nature were raised in France in 1981 with regard to police records and the 'files on Jews' that had been set up during the Nazi occupation by the Vichy Government.

Archivists have never looked fondly upon the destruction of documents of any kind. Nevertheless, when the question arises of safeguarding individuals against any risk of persecution or illegal practices, it is obviously more desirable to destroy documents than to endanger human lives.

In any event, when documents of this nature do exist, they should be carefully guarded against any possible indiscretion. It would consequently appear to be imperative to establish a time-limit of 100 years for non-accessibility.

(j) The notion of 'information obtained on promise of secrecy'. In most countries of British legal tradition, the laws stipulate the non-accessibility of documents containing information obtained by the administration 'subject to the promise of maintaining secrecy', or, in other words, documents 'whose communication would constitute a breach of trust on the part of the administration' (Australia, Bahamas, Barbados, Botswana, Canada, England, New Zealand, Sri Lanka, Tanzania, etc.).

Such a formulation, in its essence, is closely akin to that propounded in countries in which the law prohibits the communication of basic documents on statistical inquiries, although it is more liberal and more comprehensive.

In any event, in the interests of efficiency, the administration should be obliged to specify on the document itself that it contains information obtained on promise of secrecy, since it is obvious that the archivist cannot possibly determine this by his own means.

Furthermore, time-limits should be set on non-accessibility. In other words, in guaranteeing secrecy to citizens regarding information requested of them, administrations should inform them that such secrecy is only of limited duration--10, 20 or 50 years, as the case may be. In France, the duration of the 'statistical secret' is 100 years.

2.5.3 Documents containing secrets protected by the law

In addition to protecting the private lives of citizens, the law also protects a considerable number of other kinds of secrets, particularly in the fields of business and industry such as the secrets of industrial manufactures to protect them against illegal imitations, and secrets regarding scientific research, which are the most common examples, by virtue of national and international patent laws.

All these laws establish time-limits, and once they expire the secret is no longer protected. During the entire period within the time-limits established by law, the documents containing the secrets in question are excluded from communication to the public until expiration of the time-limits. The same is true of secrecy restrictions provided for by the laws with regard to banking, business transactions and geological and mining research in which substantial public or private financial interests are at stake.

2.5.4 Documents in private archives

So far we have considered only documents in public archives, that is, documents produced by public administrations or organizations and belonging to them.

Nevertheless, substantial quantities of archives proceed from private parties, families, businesses, and private law associations or establishments, and are consequently beyond the scope of the laws governing public archives.

Some of these archives remain the property of the individual, family or organization that produced them. In that case they are governed by the regulations applying to private ownership, with restrictions, however, in certain countries, deriving from the specific laws that apply to archives of historical interest.

Numerous laws exist for the specific protection of private archives proceeding from individuals, families or organizations that have played an important role in the political or economic life of a country. The notion of 'national historical heritage', which has become more and more widespread in recent legislation, now includes monuments, objects and documents belonging not only to the state but also to private parties and to private-law organizations.

In most cases, such legal protection measures do not include specific provisions regarding the accessibility of documents protected in this manner. Consequently, the French Law of 3 January 1979, while prohibiting the export, destruction or alteration of private archives declared to be 'historical archives', does not oblige their owners to make them accessible to researchers. The same is true of the Spanish Law of 21 June 1972 on the 'defence of the national documentary and bibliographical heritage', of the Algerian Law of 20 March 1977 and others of the same nature.

Some laws, however, make financial assistance provided by the state for the conservation of private archives contingent upon opening them for research. One condition that has been placed in Finland on the granting of state aid for the conservation of private archives is that 'the essence of such archives must be placed at the disposal of researchers and other users (Section 4 of the Finnish Law of 20 December 1974 on state assistance to Private Archives). Section 38 (b) of the Italian Law of 30 September 1963 contains a similer provision.

It must be admitted that the very nature of private archives makes it difficult for legislative measures alone to oblige their owners to make them accessible. This is true either because by definition they concern private life, including family relations, personal opinions, health and the like; financial secrets, such as those contained in the archives of industrial and business enterprises; or because the owners of archives, even those of historical interest, do not always possess the physical facilities for receiving researchers who come to consult them because of the lack of available space and time. Even the Italian Law of 1963, which is very strict on the principle of accessibility to private archives declared to be 'of noteworthy historical interest', recognizes that the administration of the state archives can, by agreement with the owners of archives, 'make an exception in the case of documents whose communication might create certain problems'.

In practice, the owners of archives of recognized historical interest, are usually very agreeable to communicating them to requesting researchers. Nevertheless, they sometimes refuse, either for family reasons (for example, when the ownership of an archive is being disputed among several members or branches of the same family), for economic reasons (business archives are usually of more difficult access than family archives), or even for political reasons (the archives of political parties and trade unions in certain countries).[1]

Many private archives are currently conserved in public archives repositories, either because they have been donated or sold by their owners or because they have been simply deposited with the understanding that they can be retrieved at will.

In the case of donation or sale, such archives, even if they conserve their legal status as private archives, are generally available for research under the same conditions as public archives unless stipulations to the contrary are made at the time of donation or purchase.

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1. See the article by Pierre Assouline, 'Les archives secrètes existent-ellez?', in L'Histoire, No.54, March 1983, regarding the difficulties encountered by historians in seeking access to the archives of the Socialist Party and the Communist Party in France.

On the other hand, in the case of retrievable transfers, the owners are empowered to authorize or limit access to the archives as they wish. In many cases, such restriction to access is temporary, covering a period, for example, of some 20 or 30 years after the date of transfer and thereby avoiding the risk of indiscretion with respect to recent family or personal events. In any event, such restrictions should never be generalized or systematic, nor should they extend beyond the life of the depositary and his direct heirs (cf. Bautier, R.-H., in Proceedings of the 10th International Round Table Conference on Archives, Copenhagen, 1967).

2.5.5 A special case: the papers of heads of state and public figures

One of the most difficult problems to solve from the legal standpoint is that of the nature and accessibility of the papers of heads of state and important public figures such as ministers, high-level civil servants, high-ranking officers and senior magistrates.

Obviously, such papers, whatever their legal status, are of the greatest interest to historians. The private correspondence, whether to family or friends, of such figures as President Roosevelt, Sir Winston Churchill or General de Gaulle are sources of primary importance for contemporary history. They are, nevertheless, undeniably their own private property and, upon their death become the property of their natural heirs in the same manner as their personal wealth.

The difficulty lies in the fact that the subject-matter of their private lives and public functions that appears in the correspondence and papers conserved by public figures is often inextricably merged, just as in their conversations with their families and friends.

Furthermore, by reason of the functions of such figures, the information that may be found in these papers is often of a highly confidential nature, and on several occasions, laws or regulations have been enacted to prevent their dissemination. Thus, in France, in the times of Louis XIV, all the papers of high-ranking diplomats and military men were sealed and deposited in the state archives upon their deaths or upon their ceasing to exercise their functions. In our times such measures would no longer be conceivable save in exceptional circumstances, for example, in executing a court judgement or in the event of high treason.

The Watergate affair led the Supreme Court and the Congress of the United States to extend greatly the notion of public ownership of presidential archives and to make them the object of a great deal of publicity. Nevertheless, those circumstances were exceptional and few countries would be willing to go so far today.

In France, the deposition of presidential papers with the National Archives is a matter of contract, since the Presidents may legally choose to deposit such papers or not as they see fit, although it appears that the custom of making such deposits has tended to become the rule over the past 20 years or so. Of course, in such cases, the President or his heirs are free to impose restrictions on the communication of the documents deposited. Such restrictions are generally limited to a period of 30 years, as in the case of actual public archives.

The archives of public figures may be put on an equal footing with those of reigning houses, which in constitutional monarchies are considered as private, and not public, archives. In most cases, their communication is left to the decision of the sovereign. In other countries they become accessible only at the end of usually very long time-limits. In Denmark only the archives dating from before the succession of King Christian IX to the throne in 1863 are accessible.

2.5.6 The designation of documents not freely accessible

In many countries where accessibility is not necessarily linked to the transfer of documents to public archives (see Section 2.3), it is at times difficult for researchers and even for archivists themselves to know precisely which documents are accessible and which are of restricted access.

This difficulty is a source of dispute between archivists and researchers, and it can bring about particularly serious consequences for archivists who have inadvertently communicated documents of limited access.

Three possible solutions exist to remedy this situation:

1. A list of the categories of documents whose access is restricted by formal legislation or regulations can be posted in the reading rooms of archives or printed and delivered without cost to researchers upon their arrival at the archives. This practice is useful for providing general information to researchers, but it does not solve the uncertainties arising in the case of a given document considered in isolation, for example, when a divergence of interpretation exists regarding the notion of 'privacy' or 'public security'.

2. Documents excluded from free communication for a longer period than the general time-limit fixed by law can be labelled either with a special stamp reading 'Communication after 60 years' or 'Communication after 100 years', or by their insertion in a coloured folder bearing an indication of the time-limit for their accessibility. It is, of course, the duty of those who have handled the documents from the very beginning to affix the stamps or insert the documents in the appropriate folder.

3. Documents whose accessibility time-limits are different from the general time-limits fixed by law can be specifically designated on the transfer list accompanying the transfer. This is the prescribed procedure followed in France after the Decree of 3 December 1979.

Whatever the system used, it should be strictly enforced by all services and organizations involved in producing archives. Unless this is ensured, the danger exists that the legal time-limits for accessibility will not be observed, but through no fault of the archivists.

The archivists themselves cannot be solely responsible for deciding which documents they may communicate. In his report on 'Contemporary History and Archives' at the 9th International Congress on Archives, held in London in 1980, J. Lindroth told of the case of a Swedish archivist who 'was compelled to devote most of his time over several years to determining on grounds of governmental decisions precisely which documents could be offered and which could not' to a single research project concerning Sweden during the Second World War. Only a clear marking of documents at the time of their transfer to public archives would make it possible to avoid such problems.

Of course, whether indications regarding the accessibility of documents appear on the documents themselves or not, they should certainly appear clearly on the finding aids placed at the disposal of the public, so that the researcher may know from the beginning what is accessible and what is not.

2.6 Legal access for all or for specific categories of researchers?

For a long time, as we have seen, access to public records was restricted to a few privileged researchers--members of the government, senior civil servants, well-known and trusted historians.

In contrast, the law in most countries now guarantees free access to the archives (within the limits specified above in Sections 2.4 and 2.5) for all citizens of the country.

Nevertheless, the various national laws continue to diverge on two points: the preferential treatment granted to certain categories of researchers and the admission of foreign researchers.

2.6.1 The categories of privileged researchers

While the 'right to information' for all is relatively recent as a legally acknowledged right, the opening of the archives for historical research is well-established.

The question that arises now is whether 'researchers'--however this term is intended--should benefit from a special right of access to the archives; or whether all citizens should be treated equally in this respect.

As has been remarked above (Sections 1.3 and 1.4), demand for consultation of archives by the non-specialized general public is a recent development. Hence it is only in the last few years that the question of 'equal' or 'privileged' access to the archives has arisen.

Current archival legislation in most countries makes no distinction between the various categories of researchers. On the contrary, the equal right of all to access to the archives is often explicitly stated: authorized documents shall be communicated 'without restriction to any person who so requests' (French Law of 3 January 1979, Art. 6); 'the documents kept in the state archives are free for consultation, with the exception of those regarded as classified documents ...' (Italian Law of 30 September 1963, Art. 21); 'within the limits of the conditions regulating disclosure of documents, all citizens are permitted to consult, without charge, archival documents ...' (Dutch Law of 19 July 1962, Art. 7), etc.

Such definitions, if taken literally, imply that researchers are not required to show reason for requesting documents to be communicated, since no distinction is made by law between the various categories of research.

Nevertheless, in some other countries, access to archives is limited to certain restrictively enumerated categories of research. Thus, at the Federal German archives, documents are only made available for:

research carried out by government departments or bodies from which the archives originated;

scientific research intended for publication (excluding students preparing theses or dissertations remaining in manuscript form);

the requirements of cultural advertising in the press, on the radio and television or at the cinema;

research enabling those concerned to prove some legal right ('Benutzungsordnung für das Bundesarchiv', 11 September 1969, Art. 2).

Less specific but equally restrictive is the wording of the Regulation of the USSR State Archive Fonds of 4 April 1980: 'Documents of the State Archive Fonds of the USSR shall be used for political, economic, scientific and socio-cultural ends, and to guarantee the rights and legitimate interests of the citizens' (Article 23). There are similar definitions in Romania (decree of 20 December 1971, Article 20) and in Bulgaria (law of 12 July 1974, Article 18). At the National Archives of India, the Research Rules of 1980 restrict access to the archives to 'bona fide research scholars' who are defined as: members of the Indian Historical Records Commission, university and college teachers and lecturers, students in higher education studying for degrees, civil servants carrying out research for their departments. A similar practice seems fairly widespread--even if it is not explicitly stated in official regulations--in a sizeable number of African and Asian countries. Where the purposes of research in the archives are restrictively defined by the law, individuals requesting access to records must, of course, show that their research justifies such access. It may be concluded that someone coming to the archives out of mere curiosity--in particular, in order to trace a genealogy, as has become fashionable in the last few years--would be refused access to the records.

In some countries, children and adolescents under the age of 15 or 18 are refused access to archives, clearly in order to protect the documents.

Apart from the last-mentioned restriction, which may be justified for the sake of security, limitations on access to the public archives for the benefit of certain categories of research, hence of researchers, must be considered contrary not only to the principle of the freedom of information but also to that of the equality of all before the law. Universities and historians should not make up a privileged category of citizens for access to documentation, which is the property of all.

2.6.2 Admission of foreign researchers

For a long time, freedom of access to the public archives was restricted to nationals; foreign researchers had to comply with certain formalities which, in certain cases, were practically equivalent to exclusion.

Uniformity of treatment for researchers, whether nationals or foreigners, has been one of the objectives of Unesco and the International Council on Archives since they came into being. Many hopes have been expressed and resolutions adopted in this direction by congresses and meetings of experts. Over the last thirty years, spectacular progress has been achieved towards this goal.

Today, most countries make their archives accessible to all applicants, with no discrimination between nationals and foreigners: Algeria, Argentina, Australia, Bahamas, Barbados, Belgium, Botswana, Brazil, Cameroon, Public Archives of Canada, Costa Rica, Denmark, Dominican Republic, Ecuador, France, Gambia, Israel, Japan, Jordan, Luxembourg, Netherlands, New Zealand, Nigeria, Norway, Panama, Papua-New Guinea, San Marino, Senegal, Seychelles, Spain, Sri Lanka, Sudan, Sweden, Switzerland (except for some cantons), United Kingdom, United States, Zimbabwe. (NB. This list is not restrictive: it includes only countries which replied to the questionnaire on this specific point).

Certain countries make admission of foreigner researchers dependent--at least in theory--on the condition of reciprocity: Austria, Federal Republic of Germany (exceptions admitted), Italy, certain Swiss cantons.

There is, on the other hand, a fairly large number of countries where foreign researchers are required to comply with special formalities, ranging from mere accreditation from their consulates or from a university or scientific body to a formal investigation into the purposes of the research: Andorra, Benin, Bulgaria,

Chile, Czechoslovakia, Finland, German Democratic Republic, Hungary, India, Iraq, Poland, Romania, Turkey, USSR, Zaire, Zambia. In these countries, permission for foreigners to consult archival documents is generally granted by the archivists themselves, but sometimes requires the agreement of the authorities (thus in Czechoslovakia: 'foreigners and stateless persons may only consult documents kept in the archives with the permission of the Minister of the Interior in the case of documents kept in the state archives, or with that of the head of the organization responsible for the archives in the case of documents kept in other repositories' (Law of 17 October 1974, Art. 12)).

Sometimes the restrictions placed on research by foreign researchers only apply to certain specified categories of documents: documents concerning foreign policy questions in Bulgaria, post-1918 documents (Hungary), post-1939 documents (Poland), etc. In several countries, access to diplomatic and military archives is restricted for foreign researchers, especially documents concerning frontier problems and border disputes.

So long as all the archives are not completely opened for foreign researchers, which remains the goal to be pursued, it would at least be desirable for all documents concerning several countries to be accessible to the citizens of all these countries. Bi- and multi-lateral conventions on this point should be included in all the international treaties on cultural co-operation.

2.7 Special clearance procedures

Whether in the case of documents classified on the grounds of protection of state interests, respect for privacy or any other reason, or quite simply documents which have not reached the time-limit for free access, laws and regulations almost invariably make provision for special permission. If such a possibility did not exist, whole classes of archival documents would remain definitively inaccessible for historical research.

In many cases, unfortunately, this permission is granted or refused in arbitrary fashion by the political and/or administrative authorities: thus in Bahamas, Benin, Botswana, Cameroon, Colombia, Costa Rica, Dominican Republic, Ecuador, Gambia, Federal German archives, Hungary, India, Israel, Italy (at the discretion of the Minister of the Interior: decree of 30 December 1975), Jordan, Malawi, Mauritius, Mexico, New Zealand, Panama, Papua-New Guinea, Portugal, Qatar, South Africa ('The Minister of National Education may, upon application by any person, in his discretion and subject to such conditions as he may impose, authorize that person to have access to any archives to which members of the public have no access': Archives Act of 1962, Art. 9, 6), United Kingdom, Zambia.

In most countries, however, clearance for access is granted either directly by the archivists, or jointly by the Director of the Archives and by the chief of the government department or body from which the documents come: this is the situation of the national archives of Australia, Austria, Barbados, Czechoslovakia, France, Iraq, Japan, Netherlands, Nigeria, Sweden, Swiss Federal Archives, USSR, Zaire, Zimbabwe.

In some countries, there are more complex procedures, including those which leave the applicant the right of appeal in case of refusal. Submission of the request to the Advisory Council on Archives (Algeria), decision of the competent minister or the Council of State (Finland), decision of the Committee on Secrecy and Research (Norway), appeal to the Federal District Courts (United States). In France, the possibility of legal redress exists only for refusals to communicate documents requested in application of the Law of 17 July 1978 on Freedom of Access to Administrative Documents. The right of appeal to a commission or a mixed committee (made up of civil servants, archivists and historians) should be extended to all countries.

Nevertheless, access to certain categories of documents (in particular, recent diplomatic and military documents, or documents containing confidential information of a personal nature) is limited by specific laws: for example, laws on secrecy for basic statistical documents, medical secrecy or privacy, which narrow down the possibilities for authorizing access, except on the very strict conditions laid down by the law.

It seems unavoidable, in the case of documents which are, precisely, exempted by law from free access by the public, that granting or refusing access should be a somewhat subjective matter. Appraisal of the arguments put forward by the applicant may vary according to the place, time and individuals involved. In no country in the world can a citizen demand as of right that the law be waived for his benefit: any derogation implies an exception to common law and is never obligatory.

Up to now, authorities in all countries have tended to reserve special clearances for access to archives for well-known historians able to prove the scientific nature of their research and their publications.

In this respect, it is interesting to quote a ruling made recently by a court in the Netherlands in relation to the refusal to grant access to archives to a journalist: 'The dividing line between scientific research and non-scientific research cannot be determined solely by the nature of the publication for which the result of this research is intended. It is therefore preferable to rule that, for serious historical research, a departure may in principle be made from legislation currently in force regarding the secrecy of archives'. This decision considerably broadens the traditional notion of 'historical research', since it extends it, in fact, to the publication of newspaper articles.

However that may be, it is quite clear that those granted exceptional clearance for access to archives must respect the laws regarding privacy and protection of national interests. This is why, in most countries, exceptional clearance is strictly individual (and hence not transferable to a person other than the bearer), restrictive (the list of authorized documents is appended to the clearance permit) and dependent upon specific conditions: it is forbidden to make photocopies, to publish certain information contained in the documents, notably information naming persons, the disclosure of which would lead to prosecution. Infringement of these conditions lays the offender open to prosecution.

2.8 Should access to archives be free of charge?

In the legislation of most countries, since access to archives is regarded as a right for citizens, it follows naturally that reference service should be free of charge.

Yet there is no conclusive reason why it should be free. Thus--to cite an analogous case--it is recognized that everyone has the right to send mail by post and yet this service is not free. Likewise, the right to use public transport does not imply that it should be free. In Finland, communication of archival documents is regarded as a service performed by the state, and only consultation of the paper documents in the place where they are kept is free of charge.

In the last few years, it has been suggested in several countries that payment should be charged for research in the archives conducted out of pure curiosity; this proposition would have the twofold advantage of providing archive services with the funds they so badly need (enabling them to take on staff, to buy equipment, etc.) and of dissuading the idler 'researchers', who take up an unwarranted amount of the archivists' time and increase the risks of deterioration in the physical condition of the documents.

We do not, however, consider such a proposition acceptable, since it would lead to the creation, in another shape, of the very discrimination between various categories of researchers, which as we have already said (Section 2.6.1) is to be avoided at all costs.

On the other hand, the principle of charging payment for research carried out on behalf of a member of the public seems perfectly acceptable. In several countries, only research which does not involve more than five or ten minutes' work on the part of the archive staff is carried out free of charge; any research lasting longer must be paid for. We consider this sytem perfectly in keeping with the notion of public service.

As far as payment for photocopies is concerned, it is virtually universal, although rates vary considerably from one country to another. We shall re-examine this question in Section 4.2.2.

3. Material obstacles to access to archives

3.1 The material conditions for access to archives

Free access to archives for everyone runs up not only against the obstacles of laws and rules: there are also material and practical obstacles to consider, and these are by no means the least difficult to overcome.

3.1.1 Access to documents outside public archive repositories

It would be futile to lay down in law the right of the public to consult archival documents if the material means for such consultation were not provided.

Laws such as the 'Freedom of Information Act' (see above, Section 2.2) stipulate that administrative documents must be made available to the public, wherever they are kept. In some countries, particularly the United States, this has led to the organization, in the government departments most frequently faced with this type of request, of a reference service with specialized premises and staff; we have seen that for the United States Central Intelligence Agency, this involved considerable expense and occupied several hundred employees.

Furthermore, in all countries, many administrative agencies and public bodies keep on their own premises documents which, according to the laws in force, have reached the date of free access. The problem thus arises of making them available should a researcher ask for them. All too often, the agency answers with a refusal (explicit or implicit), because it has neither the premises nor the staff to provide the reference service. Sometimes, however, the researcher is invited into some office or room and the documents are placed at his disposal. The personality of the applicant, his manner, and the purposes of his research play an important part in this respect. There is no doubt that the question of documents kept on the premises of administrative agencies is one of the least satisfactory features of the problem of access to archives.

3.1.2 Opening archive repositories to the public. The formalities of access to documents

In the great majority of countries, the main archives repositories are open to the public on working days, at times which vary according to local usage and to the supervisory staff available (repositories are often closed in the afternoon in hot countries).

Where repositories are open on Saturdays, whether all day or only in the morning, researchers are often asked to request their documents the day before, since only documents ordered in advance are made available then. Likewise, where repositories remain open at lunch time, no further documents are made available at that time.

Several major repositories have 'late' opening (until 10 p.m. or midnight) one or two days a week, in order to provide easier access for researchers who have no free time during the day. However, only one repository, as far as we know, has 'non-stop' opening round the clock; it is the Public Archives of Canada, in Ottawa, where readers may make use of lockable pigeon-holes which enable them to keep available the documents they asked to consult.

Opening times often depend on the season: in general, repositories open less during the summer holidays than during the rest of the year, because of staff holidays. In some countries, repositories close down once a year (for one or two weeks), mainly for cleaning purposes, but this practice is strongly criticized by researchers, who are thus temporarily deprived of access to the archives.

Restrictions on opening times of archives are obviously linked to staff shortages, which are all too common in a large number of countries. More specifically, it is the problem of staff shortages that prevents more repositories from staying open late or on Sundays and public holidays, despite growing demand from the researchers, especially from those who carry out research in the archives as a pastime outside their working time.

As far as official formalities required for consulting the documents are concerned, countries may be divided into two major groups: on the one hand, those where only proof of identity is required (Argentina, Bahamas, Belgium, Brazil, Cameroon, Denmark, France, Israel, Italy, Japan, Jordan, Mexico, Netherlands, Nigeria, Norway, Portugal, Senegal, Switzerland, United Kingdom, United States, Zambia, Zimbabwe), and on the other hand, those where a written request is required in advance, notice ranging from one day to two weeks (Austria, Bulgaria, Chile, Czechoslovakia, Federal German Archives, Hungary, India, Indonesia, Malawi, Poland, Qatar, Sri Lanka, Sudan, USSR). A few rare countries (Finland, Mauritius, New Zealand, Seychelles) accept researchers without any formalities.

There are considerable variations between countries as to the degree of precision required by the regulations to prove identity. In general, it is considered sufficient to note the name and address of the applicant, together with the number of his identity document. Only those countries which make a distinction between the various categories of researchers (see above, Section 2.6.1) require a reference from a university or other academic institution. Naturally, foreign researchers must comply with special formalities for proving identity where the law restricts access to the archives for them (see above, section 2.6.2).

The very principle of proof of identity raises a legal problem in countries like France, the Netherlands, Sweden and the United States, where the law establishes the absolute right of all persons to access to documents. Here proof of identity is required only on the grounds of security, in order, eventually, to retrace the individual in the event of documents being stolen or damaged.

In any case, in these same countries, it is not lawful to require researchers to state the subject and purpose of their research: the right of access to documents is independent of any justification. Nevertheless, the registration forms for the researchers generally include a question on this point, intended to enable archive services to monitor overall trends in research and to compile their own statistics; but the researchers are free to answer this question or not.

On the other hand, it is quite proper, as is the practice in Canada and various other countries, to require the researcher to sign a declaration by which he undertakes, having taken note of the rules for consultation, to observe them.

Restrictions on opening times of archive repositories for the public are due to staff problems. The same problems account for the fact that in nearly all major archive repositories, the number of documents made available daily to each researcher is limited, so as to avoid constant to-ing and fro-ing between the reading room and the storerooms. This restriction ranges from four or five boxes or bundles of archives a day to twenty or even fifty a day (Denmark); the average is from eight to twelve a day. Exceptions are often provided for in the case of foreign researchers who can stay only a short time and who can prove the urgent nature of their research.

In order to prevent documents from two bundles or boxes of archives from being mixed together, in the majority of major repositories not more than one bundle or box is made available at a given moment to the same researcher. This should be a cardinal rule everywhere. It is hardly necessary, however, in the case of bulky volumes or large-format documents, where the risk of confusion is non-existent. Only a handful of countries make access to documents dependent upon a written request submitted or sent in advance (Bulgaria, Czechoslovakia, India, Indonesia, Poland, Sri Lanka, Sudan). Everywhere else, documents are made available within between ten minutes and two hours after the request is filed, except on days and at times of reduced service. In most major repositories there is a system of prior reservation for documents, by letter or by telephone which saves researchers from having to wait on arrival.

3.1.3 Restrictions required for the physical protection of the documents

It is the duty of archives services to make the documents of which they have custody available according to the conditions laid down by law, but it is also their duty to preserve the documents and, in particular, to protect them from the dangers to which too frequent or too brutal handling might expose them.

In practically all countries (with the exception of the poorest), in the last thirty years, microfilms have been made of the most precious, fragile and frequently requested documents. These microfilms are generally given for consultation in place of the original documents. Some researchers protest at the consequent inconvenience of having to use projecters with screens or frosted glass, in order to read the microfilms, but this obligation can hardly be regarded as a real restriction on the right of access to documents, as defined by the law.

Unfortunately microfilm is an expensive technique, and it is obviously impossible, even in the richest countries, to microfilm all archives. Most documents are therefore still made available in the original.

It is a fact that many documents are in a poor condition and cannot stand up to too much handling. This may result from their age (old paper affected by humidity or by insects or acidity), or simply from the careless way in which they have been treated (paper torn or crumpled), or else from catastrophes (floods or fires). Documents kept in tropical countries, which are often among the poorest, are also those most at risk from fungus growths, insects or acidity.

In most countries, there are rules prohibiting public access to fragile or damaged documents. Such rules, justified though they may be by concern for preserving the documents, may seriously inconvenience researchers. Moreover, they raise legal problems; the fact that a document is in a poor physical state should not result in its content--which may be very important--being made inaccessible.

In such cases, wherever it is possible, the document should either be restored (by mechanical or hand techniques), or else photographed/microfilmed. An absolute ban on access should be restricted to extreme cases, where merely handling the document may cause it to disintegrate (where documents have been eaten away by insects, for instance), and where it cannot be restored or photographed.

On the other hand, it is reasonable that strict precautions be taken when fragile documents are made available, and that this should happen only under the closest supervision.

In several countries (Argentina, Bahamas, Barbados, Belgium, Cameroon, Chili, Costa Rica, Gambia, Indonesia, Mauritius, Netherlands, New Zealand, Poland, Romania, Senegal, Swiss Federal Archives, United Kingdom, Zambia, Zimbabwe), holdings that are not arranged or which lack finding aids cannot be consulted, or may be consulted only by special permission and when special precautions are taken. The reason for such restriction is obvious: researchers handling unarranged documents increase the risk of creating disorder in the holdings and of documents being stolen. Nevertheless, this constitutes a serious infringement of legal provisions for access to archives, since the researcher is not responsible for the non-arrangement of archives holdings. There might even be the risk, with non-arrangement used as an excuse, of virtually creating a system of arbitrary control by the archivists, any one of whom would be in a position to postpone access to an archival group indefinitely simply by omitting to arrange it.

For these reasons, most countries other than those mentioned above have no rule authorizing the archivists to refuse access to archival documents on the ground of non-arrangement. What happens, simply, is that the documents are made available under supervision, and after the researcher has been warned of their state of disorder. In several countries (Barbados, Chile, Gambia, Italy, Netherlands, New Zealand, Romania, United Kingdom, Zambia), each request is examined individually, and permission is granted only for research of an academic or administrative nature, and to researchers whose carefulness and honesty are not open to doubt.

3.1.4 Large scale access

A particularly difficult problem to deal with in archive repositories with limited staff, and even in bigger ones is raised by requests for access concerning large quantities of serial documents, from teams of researchers working on the analysis of numerical data for quantitative historical studies, such as demographic history, economic history or the like.

It is thus not unusual for groups of researchers (often university students under the direction of their professor) to request several dozen records or files of documents in rapid succession, leading to a considerable disturbance in the operation of an archival service.

Certain large archive repositories have a special room for this purpose, apart from the regular reading room, where documents requested in large numbers can be prepared in advance and consulted without disturbing other readers. Unfortunately, such a facility is not very common.

In other cases, archivists allow the researchers to work directly in the archival storage areas, freely consulting the shelves. It is easy to imagine the risks involved as regards documents safety and even building security if the researchers are not adequately supervised throughout their investigation.

A more rational solution is to use one or two members of the research team as 'extra' staff to handle and carry the requested documents from the stores to the reading room and back, under the supervision and responsibility of the archival staff.

Whatever method is adopted, users requesting numerous documents should of course conform to the rule of requesting their documents in advance, and should avoid disturbing other researchers by their behaviour as a group.

3.2 Public awareness of the contents of archives

The laws and regulations guaranteeing freedom of access to archival documents would be useless if the existence and content of the documents remained unknown to the public.

This raises the very complex issue of 'advertising' archives and also the problem of finding aids.

It is obviously impossible to discuss these problems here other than very briefly. They have already been reviewed in numerous studies in the literature, such as the report by Dr Eckhart Franz for the 20th International Conference of the Round Table on Archives (Oslo, September 1981) on the topic of 'Information and orientation of the user'.

With few exceptions, the public at large is generally quite unaware of archives; only historians and administrators know what can be found in them and how to use them. Television programmes and articles in the press have only a short-lived impact and just interest the public superficially. Exhibits of documents, and especially explanatory sessions designed for students and pupils, have a more far-reaching effect, but only concern a limited population. It can therefore be said that practically everywhere archives remain an unknown treasure.

To remedy this situation, many activities have been undertaken, some on the initiative of the International Council on Archives and Unesco, over the past thirty years. The most spectacular is the 'International Weeks' organized every few years to improve public awareness through exhibits, publications, posters and radio and television programmes. However, the scope and impact of such initiatives vary considerably from one country to another, and are negligible in many.

The countries with extensive, ancient archives usually also have a 'public relations' service which provides the public with information on the archives, their holdings and their use. In certain cases (such as the Canadian Public Archives the National Archives of France, the Central State Archives of Italy and the Public Record Office of the United Kingdom), archivists will provide detailed information in response to requests from scholarly researchers. Elsewhere, inquirers are merely given the rules for access to the archives and the titles of specialized publications such as directories, guidebooks, inventories and catalogues.

Practically everywhere, staff shortages are the reason for the insufficient help available for the public in archival research. Archive repositories that have experts in paleography and diplomatics on hand for researchers are rare. The rule of thumb seems to be that archivists must limit their work to 'making the records available to the public', and that they need not get involved any further.

However, unfortunately many researchers do not know where they should look for the information they need, and that is precisely why they consult archivists. Thus, access to archives depends on the number and quality of finding aids just as much as on legislation and regulations.

In this respect, the older countries with ancient archives and a long archival tradition are much more advanced than the others. Austria, Belgium, France, Italy, the Netherlands, Spain and the United Kingdom have many excellent inventories of almost all their 'historical' archives. Certain holdings have even been published entirely in books or microfilmed, and numerous studies carried out on such archives.

Paradoxically, the most recent records are generally the least well-known and accessible. This is because they are much greater in volume and more complex, and therefore more difficult to arrange and inventory, and also because they are often incomplete and in the process of expanding.

Over the past 150 years, archivists from the different countries have developed a wide variety of finding aids, from the most basic (list of holdings, summary list) to the most detailed (analytic inventory, calendar). Unfortunately, such aids are not standardized on an international scale, and users of a given country must therefore get acquainted with finding aids that differ from those used in neighbouring countries. However, the general principles of archival finding aid drafting tend to be similar thanks to action by the International Council on Archives.

In this respect, efforts have been geared to four main activities:

1. publication of 'archival guides', by repository, by country or by topic, in order to provide an overall view of archival holdings and of the finding aids for access thereto;

2. drafting of brief or detailed lists of the records included in transfers from various administrations and bodies (transfer lists);

3. drafting of indexes (person, place, subject) for finding aids, especially for descriptive transfer lists;

4. computerization of finding aids, particularly of indexes.

All major repositories have collections, not only of their own finding aids, but also of those of other repositories in the country and even abroad. International exchanges of finding aids are organized regularly; for example, the National Archives of France send printed copies of their finding aids to over sixty countries.

However, the cost of printing, even offset, greatly limits the number of printed finding aids. The vast majority of finding aids once drawn up, remain manuscript or typewritten. The above-mentioned report by Dr Franz shows that only a minute proportion of modern archives are equipped with printed finding aids. A great number of countries have none at all. Few countries, and only those with important historical archives, diffuse their finding aids (or at least some of them) in the form of microfilms or microfiches. Such inadequate diffusion of finding aids is undoubtedly one of the most serious obstacles in access to archives throughout the world.

4. Diffusion of archival information

The information contained in archives can be diffused in three ways: by transportation of the records themselves, their reproduction by photography or any other method and their publication in printed or other form, completely or in parts. Each of these methods raises legal and practical problems, mainly financial.

4.1 Removing records from their storage area

Certain countries allow their archives (or some of them) to be removed from their normal storage area in special conditions and for specific purposes. Other countries strictly refuse to do so.

The case of documents removed for administrative or legal reasons (for example, to be used as evidence during a trial, or for a legal procedure) is different: it is a common practice in all countries, particularly when the records are loaned to the administration or body by which they were transferred originally.

In contrast, the transportation of archives outside of their storage place for access to researchers is far from being authorized everywhere. Several countries previously allowing it have now considerably restricted it in order to preserve the records, due to accidents and losses incurred during such transportation (Belgium, France). Original documents are currently only sent away from their repository for consultation by the public in sixteen countries: Austria, Bulgaria, Costa Rica, Denmark, the Federal Republic of Germany, Finland, France, Hungary, Israel, the Netherlands, Nigeria, Norway, Poland, Romania, Sweden and Switzerland.

Record sending is nevertheless subject to strict rules:

records are only loaned to official establishments, archival repositories, libraries or universities, and never to individuals in their private homes;

precious, fragile or overly voluminous records are never loaned;

. the number of records loaned and the length of time they are loaned are both limited;

records are only loaned for academic research.

Original public archives are almost never loaned for research outside of the country: only Benelux (Belgium, Luxembourg and the Netherlands) and the Scandinavian countries are known to have agreements on archival loans, sometimes (in the case of Benelux) also including the Federal Republic of Germany. However, practically speaking, such loans--usually made through embassy dispatch bags--remain rare, and Belgium even completely discontinued them a few years ago in order to preserve its records.

Archival documents, like library books or museum pieces, are sometimes loaned for exhibits outside of their storage place, and even abroad, on condition that the appropriate technical precautions are taken and guarantees provided. However, this is a rather infrequent practice compared with diffusion as a whole. Exhibiting archival documents also raises serious problems with respect to their presentation (risk of theft, plunder, damaging effects of light, etc.), to such an extent that certain countries are no longer willing to exhibit the most precious documents, even in the archives where they belong.

4.2 Microfilming and reproducing documents

Since the end of the Second World War, mainly since the 1960s, the most common methods used to diffuse archival holdings are microfilm and reprography, especially the former.

Microfilming archives poses numerous legal and technical problems, which have been frequently discussed in the professional literature. Progress has undeniably been achieved, to a great extent thanks to action by Unesco and the International Council on archives.

4.2.1 The legal problems

The value of public archives is twofold: they have legal and administrative value, resulting from their very origin (this being particularly true of Germanic and Anglo-Saxon countries, where documents are presumed to be genuine from the fact that they are kept in a public archive repository), and informative value, as a documentary source.

When a document is reproduced, either by microfilming, or by any other duplicating technique, this raises the problem of whether the reproduction has the same legal and administrative value as the original. Mr Georges Weill examined this problem recently in a study for the RAMP ('The admissibility of microforms as evidence: a RAMP study', Unesco 1981); the answers given to this question of the legal admissibility of microfilms differ considerably from one country to another.

Moreover, the microfilming of archives raises other legal problems, with respect both to copyright (see below, Section 4.3) and to the notion of 'moral ownership' of the documents.

As a general rule, the reproduction of freely available documents is permitted without formalities, when a single copy is made, for non-commercial purposes, and in reasonable quantities. When the archive office has reproduction equipment (microfilm cameras or duplicating equipment), it usually reserves the right to make the requested reproductions itself, a charge being made for the materials used and to pay off the equipment: this is the case in almost all the major and medium-sized archive repositories in the world.

Nevertheless, in a few countries special permission is required to have any public archival document microfilmed or reproduced: Hungary, Nigeria, Seychelles, Zimbabwe.

In all countries the reproduction of fragile and precious documents is subject to special restrictions, in order to protect them from the risks created by handling (thus, in Finland and France, the reproduction of all bound documents is forbidden, as a rule, in order to avoid breaking the back of the bindings).

Most countries today have a liberal policy with regard to microfilming, as was recommended by Mr Charles Kecskeméti at the 8th International Congress on Archives at Madrid in 1968 ('La libéralisation en matière d'accès aux archives et de politique de microfilmage'), in Archivum XVIII, pp. 25-48). In general, there is no restriction on microfilming for a small quantity of documents. But reservations remain as to the wisdom of microfilming entire holdings, since many archivists hold that this constitutes a veritable transfer of 'moral ownership' of the content of the archives. It is undeniable that the holdings thus microfilmed are less consulted in original form in the repository in which they are kept, but the cause of knowledge should come before these somewhat selfish considerations, just as the mass reproduction of works of art does not represent a loss for the museum where they are kept.

A special category of microfilms is that of documents concerning several countries (in particular, in the case of former colonial powers, or countries which controlled huge geographical areas), made either at joint expense, or at the expense of one of the countries concerned. In this form, microfilm is one of the more feasible solutions to problems in international archival disputes, although in practice, projects of this type are still fairly rare and very modest in relation to the huge quantities of holdings concerned.

In a few countries, microfilms of public archive holdings or parts thereof, which are of special historical interest, are put on sale; thus researchers from all countries may study these documents, without the repositories where the original documents are kept suffering the slightest loss: indeed, the original documents are thereby protected from the handling that would result from too frequent consultation. It is to be hoped that this practice will be extended, at least in countries possessing large historical archive holdings.

Another fairly complex legal problem is raised by the movement of microfilms between different countries. In many cases, importation is subject to strict customs controls, which considerably impede the free flow of information contained in the archives.

4.2.2 The practical problems

Reprography (photocopying or electrocopying) is a widespread technique today; there are few countries where archive repositories have no duplicating equipment. In some countries, reproductions of archival documents are even issued free, to a maximum of 5 (Cameroon) or even 20 (Qatar). Nevertheless, the cost of duplicating rises rapidly for large numbers of documents, and all the more so for entire holdings. We know of no projects to photocopy or electrocopy entire archive holdings, although programmes of this kind exist for microfilm.

Unlike photocopying and electrocopying, microfilm requires complex and expensive equipment and specialized staff, which are not available in many countries. Various international or bilateral projects have been undertaken in the last thirty years to contribute to the microfilming of archives in the regions of the world lacking the means to do so themselves. Mobile microfilming units funded by Unesco have travelled around South-East Asia and Latin America. Equipment has been supplied to various countries in Africa, America and Asia; experts have been sent to train competent personnel. Today many countries in all regions of the world possess studios for microfilming archives.

Unfortunately, the technical development of microfilming equipment (cameras and reading equipment) has been moving, in the last few years, the wrong way for archives. The latter mainly use 35 mm film, the only format which gives good reproductions of large-scale documents or fine handwriting; however, the producers are increasingly basing their commercial policy on 16 mm equipment, which is lighter and easier to handle, but which is better adapted to the requirements of banks and offices than to those of archives. Microfiches, which are very common in libraries and documentation centres, are still little used in archive departments (although, in the opinion of some of the participants at the 21st International Conference of the Round Table on Archives, microfiches are destined to be much more widely circulated in the next few years).

Apart from the cost of the equipment, the microfilming of archive holdings requires much preparatory work (the arrangement and the preparation of the documents) and takes up a good ideal of time. As was pointed out by Mr Kecskeméti in his report to the 8th International Congress on Archives in 1968, 'archive services cannot be expected to hold up all other activity in order to devote themselves to huge microfilming operations'.

Furthermore, it emerges from the investigation carried out on this subject that microfilms, once made, are often poorly preserved, which destroys half the value of microfilming. In any case, far too many countries still lack any equipment to microfilm archives.

All these questions were debated at the 21st International Conference of the Round Table on Archives (Kuala Lumpur. November 1982), which revealed the serious technical and financial problems raised by the spread of the microfilming of archives in the world today. There is no question that continuing assistance will be required for many more years for a large number of countries if microfilms are to play a significant part in the dissemination of the information contained in archives. Complete equality in this area between all countries is still a long way off.

4.3 Publication of archives and copyright

Many researchers working in the archives wish to publish, wholly or partly, the content of the documents which they find; such publication raises, in its turn, legal problems.

Of course, when the documents are private property (whether kept in private archives or in the custody of public archives), reproduction and publication are subject to the conditions laid down by the owner, including observance of laws on intellectual property, where the case arises.

For documents of private provenance which have become public property, by gift, purchase, etc., the rules of copyright apply in their entirety: in other words, the fact that a literary manuscript has been transferred to a public archive repository in no way deprives it of protection by the laws on intellectual property in force in the country.

On the other hand, in most countries, there is complete freedom to reproduce and publish documents of public provenance, on condition that they are freely accessible; such is the case in Argentina, Belgium, Brazil, Cameroon, Chili, Costa Rica, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Finland, France, Indonesia, Israel, Italy, Jordan, Mauritius, Mexico, Netherlands, Norway, Papua New Guinea, Poland, Portugal, Qatar, Romania, Senegal, Sweden, Switzerland, United States.

There is at the very most, in some of these countries, a duty to pay on the reproduction of archival documents in commercial publications (France, Federal Republic of Germany, Indonesia), or a legal requirement that the origin of these documents be published (Federal Republic of Germany, Switzerland, Italy), or else a legal obligation to deposit in the archives a copy of the works thus published (Austria, Portugal). In Bulgaria and Poland, the official research institutes have priority for a number of years in publishing archival documents, the publication of which afterwards becomes unrestricted.

Only countries where there is the British legal tradition or a system deriving from it have 'State Copyright' on all public records; in these countries, permission is thus necessary for any publication of archives (Australia, Canada, India, Iraq, Japan, Malawi, New Zealand, Nigeria, Seychelles, Sri Lanka, Sudan, United Kingdom, Zambia, Zimbabwe). This State Copyright naturally applies not only to printed publications but also to microfilm.

The question of whether, in public archives, certain documents are covered by the laws on intellectual property is especially complex: for example, reports and studies carried out on behalf of government departments, or correspondence received by these departments. In this respect, laws differ greatly from one country to another, and are often unclear. It is generally considered that, where there is no law on State Copyright, all freely available documents in the public archives are, ipso facto, free to be reproduced and published, but the legal justification for this opinion is not completely sound (cf. A. Kerever, 'Droit d'auteur et activités administratives': rapport à la Commission de coordination de la documentation administrative, Paris 1980).

5. Three special cases

Three categories of documents raise special problems, of a legal and practical nature, as to their availability. The first two--audio-visual documents and machine readable documents--by virtue of the technical conditions under which they are consulted and reproduced; the third--archives of international organizations--owing to their nature, which puts them beyond the scope of the national legislation governing the accessibility of archives.

5.1 Audio-visual archives

By 'audio-visual documents' is meant sound documents and moving pictures, mainly records, sound tracks, motion pictures, video discs and video tapes. For our purposes, static images (photographs, engravings, etc.) may be included.[1]

Not all audio-visual documents are 'archives' in the strict sense of the word; the latter term, according to its legal definition in most countries, covers only those audio-visual documents produced or received by government departments, establishments or bodies as an integral part of their specific activity: hence, documents produced for commercial or artistic ends are excluded. This distinction is sometimes, admittedly, rather difficult to apply, and differs from one country to another, but it is necessary in order to avoid the absurdity of all audio-visual documents, including records and commercial films, being considered 'archives'.

In practice, in most countries, only audio-visual documents produced and kept by government departments and bodies are considered to be public archives.

Modern archival legislation usually includes audio-visual documents in the definition of archives, but in practice, there are few countries where these documents are actually transferred to archive repositories. In barely twenty countries, as far as we know, the public archives have an audio-visual documents department, and very few of these have special rules for access to the latter.

In some countries (for example, the Argentine Republic, Canada, the German Democratic Republic, the Federal Republic of Germany, the USSR) the film archive repositories are incorporated into the national archives, but this is by no means the rule.

Where audio-visual documents are kept in the public archive repositories, rules for access (notice required for availability, restrictions) are generally the same as for written documents. In particular, national legislation on intellectual property and copyright applies to films, records and other audio-visual documents as well as to written works. However, laws on copyright are especially difficult to observe with regard to audio-visual documents, since in all countries they lag behind technological innovations and since the number of individuals working on the production of films and television broadcasts increases the number of copyright holders, and hence, causes of dispute (cf. Carlos Hagen, 'Access to recordings, intellectual freedom and some barriers to accessibility to sound recordings', in IASA Phonographic Bulletin, July 1982).

Furthermore, a special difficulty arises from the need-in order to 'read' audio-visual documents--to use machines: tape-recorders, video tape-recorders, record players, projectors or viewers. In most cases, a charge is made for the use of these machines, proportionate to the time taken. In some countries, this is free, at least for academic researchers. Films may only be viewed in archive repositories in accordance with the restrictions of special legislation on the cinema; it is not always easy to reconcile the latter with the principle of free availability.

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1. The expression 'audio-visual archives' or 'audio-visual documents' is not, in itself, very satisfactory, since logically it should only be used for documents which have both sound and visual elements. Spanish-speaking archivists use the more logical 'documentos de imagen y de sonido'. Nevertheless, since the expressions 'audio-visual documents' and 'audio-visual archives' have become accepted English and French usage, and included as such in the International Glossary of Archival Terminology of the International Council on Archives, we shall retain it here.

The reproduction of audio-visual documents is, as a rule, regulated by the laws on copyright: only old documents, for which copyright has expired, and those which are not covered by copyright (documents produced by government documents, in countries where there is no State Copyright), may be reproduced freely, in return for payment for the material cost of the copy.

Audio-visual documents from private source (whether commercial or not) are governed by the laws on private archives (cf. Section 2.5.4).

5.2 Machine-readable archives

As is the case for audio-visual documents, it should be pointed out that 'machine-readable' documents (punch cards and computer tapes, discs, etc.) are considered archives only if they were produced by a public or private service or organization as an integral part of their specific activities. Hence they are, according to their source, public or private.

As a general rule, public archives only accept machine-readable documents produced by government departments and bodies, and these documents are governed by the same laws and rules as other public documents. There are as yet very few in archive repositories, outside a handful of very advanced countries in Europe and North America.

In some countries (Denmark, France, The Netherlands, Sweden, the United States, etc.), there exist specific laws to restrict computer storage of data concerning the private life of individuals, and to regulate the use of such data. Thus the Danish law of 8 June 1978 lays down that personal information stored in computers must be destroyed when it has no further administrative raison d'être; if such a law were applied strictly, it would deprive the archives of a considerable proportion of historical documentation forever. In France, the law of 6 January 1978 'on Electronic Data and Civil Liberties' inflicts heavy penalties on all individuals who communicate or disseminate, without consent of the person concerned, 'factual information, the disclosure of which would damage the reputation or standing of that person or violate his privacy'. Here we come back to the delicate problem of access concerning the private lives of individuals, examined above in Section 2.5.2.

For these reasons, access to machine-readable archives, even when transferred to public archives repositories, remains strictly regulated in order to avoid any risk of indiscretion touching upon the privacy of individuals. Technical means should be used to 'mask' the individual data, disclosure of which is illegal. All this is technically feasible but requires equipment and technicians whose services are normally not available to archive departments (with the possible exception of a few national archives in the major industrialized countries).

Furthermore, it is only possible to use computerized documents if readable copies--which are expensive--may be made, or if a computer, which very few archive repositories in the world possess, is available.

Thus access to machine-readable archives is, at present, far from common in archive repositories in the great majority of countries: the answer given by almost all countries to the questionnaire sent out in preparation of the present study, was that they had neither special rules nor experience in this area.

5.3 The archives of international organizations

Access to the archives of international organizations raises very special problems, firstly because--by definition--they are not covered by national laws; and also because, by their very nature, they concern international negotiations and diplomatic activity in which the part played by particular countries cannot be divulged without their consent.

This question was the subject of a study by Dr Frank B. Evans for the Second World Symposium on International Documentation (Brussels, June 1980), bearing the title 'Access to Archives of United Nations Organizations'.

In this study, Dr Evans drew attention to the serious shortcomings in the policy of most United Nations organizations concerning their archives. Out of 34 organizations listed in the 'Guide to the Archives of International Organizations. I. The United Nations system' (preliminary version, Unesco 1979), only 13 possessed an organized archives service, and of this modest total, 7 restricted access to documents to their own staff. In the 6 organizations which accepted the principle of access to their archives for outside researchers, the general closed periods for access ranged from 10 to 40 years. Of course, there are specific restrictions for documents containing particularly delicate information on Member States or about other international organizations, and for documents which might violate the privacy or jeopardize the safety of certain individuals; for staff files and files classified 'confidential' of the senior officials of the Organization.

One can see why the international organizations cannot apply to their own archives the laws of a particular country. On the other hand, it is paradoxical that the United Nations has not, since its creation, drawn up uniform rules of access to archives of all its organizations. To quote Dr Evans, 'There would seem to be little justification for certain types of records being made available for research by one agency after 20 years, while the same kinds of records are withheld by another agency until after 40 years'.

Likewise, the definition of restricted-access documents differs from one organization to another. Formulations of the kind 'documents the disclosure of which might be embarrassing for the Organization itself, for a government, for another organization or for an interested party' are excessively vague and might allow completely subjective interpretation.

Some United Nations organizations, moreover, forbid reproduction of their archives--even partial, in the form of quotations--without special permission, granted after an examination of the manuscript of the completed study. Such prohibition is admittedly usual in all countries in the case of documents that are not freely accessible, but seems unjustified when applied to documents which, according to the rules of the Organization itself, are available to any applicant.

Considering the part played for nearly 40 years by the United Nations, Unesco and other international organizations for human and intellectual freedom, which includes access to archives, it might be hoped that these organizations will set the example of liberalism with regard to accessibility to their own archives.

Nevertheless, it is clear that they can only decide to open their files to the public with the consent of all the interested parties, that is, the Member States. This is obviously a more complex procedure than is the case with the archives of a single country. It seems reasonable to suppose that uniform regulations, applicable to all the archives of the United Nations organizations, would be more efficient than a hodgepodge of heterogeneous rules.[1]

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1. The EEC, the ECSC and EURATOM issued, on 1 February 1983, regulations establishing their historical archives and opening them to research on expiry of a period of 30 years, with the exception of documents 'classified as secret' or 'considered confidential'. (Official Journal of the European Communities, Legislation No. 43, 15 February 1983.)

6. Conclusion

Throughout this study, we have essentially been considering the various legal and practical means of access to archives for the applicants: historians and other academic researchers, but also civil servants and the curious.

There is another form of 'access to archives', with which we have not dealt because it must be approached from a completely different angle, but which must not be passed over in silence in an overall study on accessibility: that is, exhibitions and, generally speaking, the efforts deployed to make archives known to the public. This is today a very dynamic aspect of the activity of archive services in a large number of countries, and will make an increasingly important contribution in the future to attracting new researchers to the archives.

Nevertheless, we should not forget that before we can be concerned about making archives 'accessible', they will have to exist, and must be in a fit state to be accessible, that is, physically intact and properly arranged. However, this twofold condition is by no means satisfied everywhere. As Mr Dadzié said at the Extraordinary International Congress on Archives held at Washington in 1966 on the subject of 'The opening of archives to research': 'in the developing countries, liberalization of access to archives must begin with their safeguarding and organization'. On receiving the questionnaire which was sent to all countries in preparation of the present study, many developing countries replied: 'Access to archives is non-existent in this country in the absence of premises, qualified staff and classified holdings'. This is, unfortunately, a feature of the question which should receive attention at world level.

Another important conclusion of this study is that if the archives are to be made truly accessible, it is not enough to proclaim, in the preamble to a Constitution or to a Declaration of Rights, the principle of the freedom of information. It would be only too easy to give examples of such proclamations in countries where it is common knowledge that government and administrative documents are, in fact, completely inaccessible.

What is needed is:

1. a law, or at least a decree, specifically affirming the right of access to public archives, and defining the latter in such a way that there can be no room for dispute about it;

2. official and public regulations, specifying which documents are freely available, which documents are subject to access restrictions, and what the procedures are for requesting permission to consult the documents which are not freely available;

3. archive repositories with reading rooms large enough to receive researchers and with staff sufficiently trained to make archives accessible, that is, to arrange, list and communicate them;

4. legislation providing the necessary guarantees for access to private archives of outstanding interest for national history.

We must not forget that public archives, by their very nature, are part of the governmental and administrative framework of a country. It would hence be quixotic to demand that they be opened completely and without restrictions to research. There will always be military and diplomatic problems, international disputes, scientific secrets, economic negotiations, not to mention questions touching people's private life, for which the documents will long remain inaccessible.

Furthermore, the archives are part of the heritage of a country and concern for making them accessible should not lead to jeopardizing their very existence. A comparison may be made here with another domain: the protection of nature. In various countries, over-rapid and systematic opening of natural wealth--forests, beaches, mountains and rivers--to the public, has led to such serious deterioration that now governments are concerned to restrict access to them, to the extent of creating 'prohibited areas' or 'limited-access areas' in order to ensure their survival. This is also the case for a number of museums or historic monuments, such as the prehistoric caves of Lascaux which had to be closed to the public in order to prevent the total disappearance of the cave frescos. Certain categories of documents in the archives have already suffered seriously from over-use. It is, of course, always possible to microfilm them in order to prevent the originals from being handled, but this is an expensive procedure, and by no means all archive services have the resources necessary for such systematic microfilming.

Thus it has been seen that the problems of the accessibility of archives are inextricably tied to a whole complex of legal problems (definition of public archives and private archives, the right to information, the right to privacy, the protection of state and private interests, etc.), and also to a whole series of technical and administrative problems (the organization of archive services and the transfer of administrative files to archive repositories, systems of arrangement and listing, etc.) and practical problems (premises for receiving the public, manpower for archive services, provision of microfilming equipment, etc.). It would be vain to expect that all these problems might be resolved in identical fashion everywhere. Inequality of economic and cultural conditions is considerable among the various countries in the world, as are their legal and administrative traditions.

In conclusion, we might at least express the following hopes:

1. that all countries will, as a minimum, adopt legislation on archives, including a definition of public and private archives, regulations for keeping them and general principles governing their availability for research;

2. that the various international organizations making up the United Nations system will adopt uniform rules concerning access to their own archives, with the consent of the Member States;

3. that assistance will be provided for the least-favoured countries in order to establish archive services capable of making documents accessible according to the rules laid down by national laws.

In order that these hopes should begin to be realized, it would seem appropriate to suggest calling, within the framework of Unesco, an international meeting bringing together, together with a number of experts in the field of access to archives, not only archivists and users of archives, but also representatives of government authorities, in particular from countries where the legislation and regulations on this point are at present non-existent or inadequate, for example Belgium, Brazil, Egypt Greece, India, the Ivory Coast, Morocco, Pakistan, the Philippines, Portugal, Spain, Thailand, Tunisia, Turkey and Zaire. (This list is given as a guide and is by no means restrictive).

For lack of an unattainable harmonization of legislation and regulations throughout the world, such a meeting, with the present report as a starting point, would at least make it possible to bring about greater awareness on the part of the governments of the various countries of the problem of the accessibility of their archives, and thus to contribute to greater knowledge and better use of an essential part of their national heritage.

APPENDIX 1

TEXTS OF LAWS AND RULES CURRENTLY IN FORCE CONCERNING ACCESS TO ARCHIVES[1]

Afghanistan: No legislation

Algeria: Décret No. 77-67 sur les Archives nationales, 20 March 1977 (Archivum XXVIII, pp. 30-45).

Argentina: Ley No. 15.930 sobre el Archivo General de la Nación, 10 November 1961 (Archivum XXI, pp. 22-25).

Australia (Australian Archives): Freedom of Information Act 1982. - Archives Bill (1981). - Until the Bill becomes law, documents are made accessible according to the decisions of the Federal Cabinet of 1970 and 1972.

Austria: Erlass zur Neurelegung der Benützungsgrenze im Osterreichischen Staatsarchiv, 12 September 1974 (Archivum XXVIII, pp. 277-278).

Bahamas: Public Records Act, 1971 (Archivum XXVIII, pp. 58-61).

Barbados: No legislation. The 30 year rule is generally applied.

Belgium: Loi relative aux Archives, 24 June 1955 (Archivum XVII, p. 67). - Arrêté du ministre des Affaires étrangères sur la communication des archives du Ministère des Affaires étrangères, 27 July 1981.

Benin: No legislation. The 30 year rule is usually applied.

Botswana: National Archives Act, 1978 (Archivum XXVIII, pp. 73-81).

Brazil: No general legislation. - For the archives of the Ministry of External Relations: Decreto No. 56.820, 1 September 1980.

Brunei: No legislation.

Bulgaria: Law on the State Archival Fonds, 1974 (Archivum XXVIII, pp. 62-65). - Decision No. 125 of the Council of Ministers for the application of the Law on State Archive Holdings, 20 December 1974 (Ibid, pp. 65-71).

Cameroon: Décret No. 73-1 sur les Archives et la Bibliothèque nationales, 3 January 1973 (Archivum XXVIII, pp. 90-93).

Canada (Public Archives of Canada = Federal Archives): Public Archives Act, 1952 (Archivum XXI, pp. 47-48). Access to Information Act, 1982, and Privacy Act 1982 (29-30-31 Elizabeth II, Chapter III).

The Central African Republic: No legislation.

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1. According to the replies received to the questionnaire sent out to all countries in November 1981, and Volumes XVII, XIX, XX, XXI and XXIII of having a publication Archivum. For countries with federal structure where each region has its own archival legislation, only texts relating to the federal archives are mentioned here.

Chile: Reglamento del Archivo Nacional, 12 October 1962 (Archivum XXI. pp. 61-64).

Colombia: Decreto sobre la organización de la Biblioteca y Archivos Nacionales, 19 April 1961 (Archivum XXI, pp. 68-70).

The People's Republic of the Congo: No legislation.

Costa Rica: No legislation (Law of 10 January 1966 on the operation of the Archivo Nacional, Archivum XXI pp. 73-75, makes no provision for access to archives).

Czechoslovakia: 1. Czech Socialist Republic: Law No. 97 on Archives, 17 October 1974 (Archivum XXVIII, pp. 113-122). - 2. Slovak Socialist Republic: Law No. 149 on Archives, 1975, and circular of the Minister of the Interior No. 122, 1976.

Denmark: Rules published by the National Archives on access to documents in the National Archives and provincial archives, 30 December 1964 and 30 September 1968 (Archivum XXVIII, pp. 125-126).

The Commonwealth of Dominica: Law No. 4798 of 23 May 1935, amended 6 April 1936 (Archivum XXVIII, pp. 165-166).

Ecuador: Ley del Sistema Nacional de Archivos, 10 June 1982.

El Salvador: No legislation.

Ethiopia: No legislation.

Fiji: Public Records Access Regulations, 1970 (Archivum XXI, pp. 204-206).

Finland: Law on public knowledge of documents of a general nature, 9 February 1951 (Archivum XVII, pp. 126-130). Decree on exemptions to public knowledge of documents of a general nature, 22 December 1951 (Ibid., pp. 130-131).

France: Loi No. 78-17 sur l'informatique, les fichiers et les libertés, 6 January 1978 (Archivum XXVIII, pp. 188-189). Lois No. 78-753 et 79-587 sur la liberté d'accès aux documents administratifs, 17 July 1978 and 11 July 1979 (ibid., pp. 189-191). - Loi No. 79-18 sur les archives, 3 January 1979 (ibid. pp. 204-205). - Décret No. 79-1035 sur les archives de la Défense, 3 December 1979 (ibid., pp. 197-199). - Décret No. 80-975 sur les archives du ministère des Affaires étrangères, 1 December 1980 (ibid., pp. 209-211).

Gabon: No legislation.

Gambia: Public Records Regulations, 1968 (Archivum XX, pp. 55-56).

The German Democratic Republic: Verordnung über das staatliche Archivwesen, 11 March 1976 (Archivum XXVIII, pp. 130-137). - Benutzungsordnung, 19 March 1976 (ibid., pp. 143-145).

Germany, Federal Republic of (Federal Archives): Benutzungsordnung für das Bundesarchiv, 11 September 1969 (Archivum XVII, pp. 42-44).

Principauté d'Andorre: Réglement des Archives nationales, 22 December 1975 (Archivum XXVIII, pp. 47-49).

Guatemala: Reglamento del Archivo Nacional, 25 June 1968 (Archivum XXI, pp. 125-128).

Haiti: No legislation

Hungary: Decree-Law No. 27 on archives, 1969 (Archivum XVII, pp. 224-227). - Rule on archive administration, decision No. 130-1971 of the Ministry of Culture.

Iceland: Regulations of the National Archives, 13 January 1916 (Archivum XVII, pp. 244-245).

India (National Archives): Archival Policy Resolution, 1972. - National Archives Research Rules, 1980.

Indonesia: No general legislation.

Iran: No general legislation.

Iraq: Law No. 142 on the National Archives Centre, 1963 (Archivum XX, pp. 177-178).

Israel: Archives Law, 1955 (Archivum XX, pp. 184-187); this law was amended in 1981. - Inspection of Material Deposited at State Archives Regulations, 15 November 1966 (ibid., pp. 191-192). - Protection of Privacy Law, 1981.

Italy: Decreto presidenziale No. 1409 sugli Archivi di Stato, 30 September 1963 (Archivum XIX, pp. 18-28). - Decreto presidenziale No. 854 sulle attribuzioni del Ministero dell'Interno in materia di documenti archivistici non ammessi alla libera consultabilità (Archivum XXVIII, pp. 218-220).

Ivory Coast: No legislation.

Japan: Rules of the National Archives, 28 June 1971 (Archivum XXVIII, pp. 223-226).

Jordan: No legislation.

Kenya: Public Archives Act, 1965 (Archivum XX, pp. 63-67).

Lebanon, Règlement du Centre des Archives nationales, 2 February 1979 (Archivum XXVIII, pp. 231-235).

Lesotho: Archives Act, 1967 (Archivum XX, pp. 69-73).

Liberia: No general legislation (the law on the National Centre for documents and Archives of 1977, Archivum XXVIII, pp. 236-241, contains no provision for access to archives).

Principality of Liechtenstein: Verordnung über des Landesarchiv, 2 December 1975 (Archivum XXVIII, pp. 242-245).

Grand Duchy of Luxembourg: Grand-Ducal Decision of 21 October 1960 (Archivum XIX, pp. 34-36). - Decision of the Government Council of 15 July 1977 and 2 May 1980 on access to war archives and diplomatic archives.

Democratic Republic of Madagascar: Arrêté sur la consultation des documents, 8 March 1967 (Archivum XX, pp. 77-78).

Malawi: National Archives Act, 1975 (Archivum XXVIII, pp. 248-257).

Malaysia: National Archives Act, 1966 (Archivum XX, pp. 209-212).

Mali: No legislation

Mauritania: Décret sur les archives nationales, 15 October 1968 (Archivum XX, pp. 94-97).

Mauritius: No general legislation.

Mexico: No general legislation.

Morocco: No legislation.

Netherlands: Law on the conservation of archives, 19 July 1962 (Archivum XIX, pp. 52-59). - Decision on application of the law on the conservation of archives, 26 March 1968 (ibid., pp. 59-66). - Law on access to administrative documentation, 9 November 1978.

New Zealand: Archives Act, 1957 (Archivum XXI, pp. 208-215).

Nigeria: Public Archives Ordinance, 1957 (Archivum XX, pp. 100-102). - Provisional Search Regulations, 1963 (ibid., p. 103).

Norway: Public Administration Act, 10 February 1967. - Freedom of Information Act, 19 June 1970. - Data Security Instructions issued by the Commander-in-Chief of the Armed Forces, 1980.

Pakistan: No general legislation.

Panama: Ley sobre el Archivo Nacional, 20 February 1941 (Archivum XXI, pp. 146-147).

Papua-New Guinea: Constitution of the Independent State of Papua New Guinea, 1975, Art. 51.

Peru: Ley No. 19414 sobre la conservación del patrimonio documental, 16 May 1972 (Archivum XXI, pp. 217-218).

Philippines: Revised Penal Code, 1969 (Archivum XX, p. 225).

Poland: Decision of the Minister of Culture and Fine Arts on access to archives, 22 March 1957, amended on 13 January 1968 (Archivum XIX, pp. 78-81, and XXVIII, pp. 286-288).

Portugal: No general legislation.

Puerto Rico: No legislation (the law on the management of public documents of 1955, amended in 1960 and 1979, Archivum XXVIII, pp. 297-303, contains no provision on access to archives).

Qatar: No legislation.

Romania: Decree No. 472/1971 on National Archive Holdings, 20 December 1971, amended in 1974 (Archivum XXVIII, pp. 304-315). - Law No. 23/1971 on the protection of state secrets.

Rwanda: No legislation.

Republic of San Marino: Legge sull'ordinamento dell'archivio pubblico e sulla vigilanza sugli archivi privati di notevole interesse storico, 28 November 1978 (Archivum XXVIII, pp. 318-323).

Saudi Arabia: Legislation in preparation.

Senegal: Loi relative aux archives, 2 February 1981 (Archivum XXVIII, pp. 324-326).

Seychelles: No legislation.

Sierra Leone: Public Archives Act, 1965 (Archivum XX, pp. 120-122).

Singapore: National Archives and Records Centre Act, 1967 (Archivum XX, pp. 227-230).

South Africa: South African Archives Act 1962, amended 1964, 1969, 1977, 1979 (Archivum X, pp. 17-21, and XXVIII, pp. 328-329). - Archives regulations, 1963 (Archivum X, pp. 22-26).

Spain: No general legislation.

Sri Lanka: National Archives Law, 1973 (Archivum XXVIII, pp. 330-336). - Regulations on Public Archives, 5 December 1978 (ibid., pp. 330-337).

Sudan: Central Records Office Act, 1965 (Archivum XX, pp. 123-124). - Central Records Regulation, 1966.

Sweden: Law on the freedom of the press, 1949, amended in 1979 (incorporated into the Constitution of the Realm). - Ordinance 1974: 648, modified 1978: 183, on machine-readable information. - Laws 1980: 100 and 1980: 880 on secrecy. - Ordinance 1980: 657 on secrecy.

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Syria: No legislation.

Tanzania: National Archives Act, 1965 (Archivum XX, pp. 127-133).

Thailand: Regulations on Records Work, 1963 (Archivum XX, pp. 236-237).

Togo: No legislation.

Trinidad and Tobago: No legislation.

Turkey: Regulations for State Archives, 19 December 1975 (Archivum XXVIII, pp. 383-385).

Uganda: No legislation.

USSR: Regulations for the State Archival Fonds, 4 April 1980 (Archivum XXVIII, pp. 339-347).

United Kingdom: Official Secrets Act, 1911. - Public Records Act, 1958, amended 1967 (Archivum XVII, pp. 184-191). - Local Government Act, 1972 (Archivum XXVIII, pp. 388-390). - Parochial Registers and Records Measure, 1978 (ibid., pp. 393-398). - Northern Ireland Public Records Act, 1923 (Archivum XVII, pp. 199-201). - Scotland Public Records Act, 1937 (ibid., pp. 204-207). - Scotland Local Government Act, 1973 (Archivum XXVIII, pp. 404-406).

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Vatican: See Archivum XXVIII, p. 427.

Venezuela: No general legislation.

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Zaire: Loi No. 78-013 sur les Archives, 11 July 1978 (Archivum XXVIII, pp. 431-434).

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Zimbabwe: National Archives Act, 1963 (Archivum XX, pp. 112-114).

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Angola, Bermuda, Bolivia, People's Republic of China, Cuba, Egypt, Greece, Guinea, Guinea-Bissau, Equatorial Guinea, Honduras, Jamaica, Mozambique, Nicaragua, Paraguay.

APPENDIX 2

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APPENDIX 3

FRANCE

LOI N° 78-753 DU 17 JUILLET 1978
portant diverses mesures d'amélioration des relations entre l'administration et le public et diverses dispositions d'ordre administratif, social et fiscal

TITRE PREMIER

De la liberté d'accès aux documents administratifs

ARTICLE PREMIER. — Le droit des administrés à l'information est précisé et garanti par le présent titre en ce qui concerne la liberté d'accès aux documents administratifs de caractère non nominatif.

Sont considérés comme documents administratifs au sens du présent titre tous dossiers, rapports, études, comptes rendus, procès-verbaux, statistiques, directives, instructions, circulaires, notes et réponses ministérielles qui comportent une interprétation du droit positif ou une description des procédures administratives, avis, à l'exception des avis du Conseil d'État et des tribunaux administratifs, prévisions et décisions revêtant la forme d'écrits, d'enregistrements sonores ou visuels, de traitements automatisés d'informations non nominatives.

ART. 2. — Sous réserve des dispositions de l'article 6 les documents administratifs sont de plein droit communicables aux personnes qui en font la demande, qu'ils émanent des administrations de l'État, des collectivités territoriales, des établissements publics ou des organismes, fussent-ils de droit privé, chargés de la gestion d'un service public.

ART. 3. — Sous réserve des dispositions de la loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés, concernant les informations nominatives figurant dans des fichiers, toute personne a le droit de connaître les informations contenues dans un document administratif dont les conclusions lui sont opposées.

Sur sa demande, ses observations à l'égard desdites conclusions sont obligatoirement consignées en annexe au document concerné.

L'utilisation d'un document administratif au mépris des dispositions ci-dessus est interdite.

ART. 4. — L'accès aux documents administratifs s'exerce :

a. Par consultation gratuite sur place, sauf si la préservation du document ne le permet pas ou n'en permet pas la reproduction;

b. Sous réserve que la reproduction ne nuise pas à la conservation du document, par délivrance de copies en un seul exemplaire, aux frais de la personne qui les sollicite, et sans que ces frais puissent excéder le coût réel des charges de fonctionnement créées par l'application du présent titre.

Le service doit délivrer la copie sollicitée ou la notification de refus de communication prévue à l'article 7.

ART. 5. — Une commission dite « commission d'accès aux documents administratifs » est chargée de veiller au respect de la liberté d'accès aux documents administratifs dans les conditions prévues par le présent titre, notamment en émettant des avis lorsqu'elle est saisie par une personne qui rencontre des difficultés pour obtenir la communication d'un document administratif, en conseillant les autorités compétentes sur toute question relative à l'application du présent titre, et en proposant toutes modifications utiles des textes législatifs ou réglementaires relatifs à la communication de documents administratifs.

La commission établit un rapport annuel qui est rendu public.

Un décret en Conseil d'État détermine la composition et le fonctionnement de la commission prévue au présent article.

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ART. 6. — Les administrations mentionnées à l'article 2 peuvent refuser de laisser consulter ou de communiquer un document administratif dont la consultation ou la communication porterait atteinte :

— au secret des délibérations du Gouvernement et des autorités responsables relevant du pouvoir exécutif;

— au secret de la défense nationale, de la politique extérieure;

— à la monnaie et au crédit public, à la sûreté de l'État et à la sécurité publique;

— au déroulement des procédures engagées devant les juridictions ou d'opérations préliminaires à de telles procédures, sauf autorisation donnée par l'autorité compétente;

— au secret de la vie privée, des dossiers personnels et médicaux;

— au secret en matière commerciale et industrielle;

— à la recherche, par les services compétents, des infractions fiscales et douanières;

— ou, de façon générale, aux secrets protégés par la loi.

Pour l'application des dispositions ci-dessus, les listes des documents administratifs qui ne peuvent être communiqués au public en raison de leur nature ou de leur objet sont fixées par arrêtés ministériels pris après avis de la commission d'accès aux documents administratifs.

ART. 7. — Le refus de communication est notifié à l'administré sous forme de décision écrite motivée. Le défaut de réponse pendant plus de deux mois vaut décision de refus.

En cas de refus exprès ou tacite, l'administré sollicite l'avis de la commission prévue à l'article 5. Cet avis doit être donné au plus tard dans le mois de la saisine de la commission. L'autorité compétente est tenue d'informer celle-ci de la suite qu'elle donne à l'affaire dans les deux mois de la réception de cet avis. Le délai du recours contentieux est prorogé jusqu'à la notification à l'administré de la réponse de l'autorité compétente.

Lorsqu'il est saisi d'un recours contentieux contre un refus de communication d'un document administratif, le juge administratif doit statuer dans le délai de six mois à compter de l'enregistrement de la requête.

ART. 8. — Sauf disposition prévoyant une décision implicite de rejet ou un accord tacite, toute décision individuelle prise au nom de l'État, d'une collectivité territoriale, d'un établissement public ou d'un organisme, fût-il de droit privé, chargé de la gestion d'un service public, n'est opposable à la personne qui en fait l'objet que si cette décision lui a été préalablement notifiée.

ART. 9. — Font l'objet d'une publication régulière :

1. Les directives, instructions, circulaires, notes et réponses ministérielles qui comportent une interprétation du droit positif ou une description des procédures administratives;

2. La signalisation des documents administratifs.

Un décret en Conseil d'État pris après avis de la commission d'accès aux documents administratifs précisera les modalités d'application du présent article.

ART. 10. — Les documents administratifs sont communiqués sous réserve des droits de propriété littéraire et artistique.

L'exercice du droit à la communication institué par le présent titre exclut, pour ses bénéficiaires ou pour les tiers, la possibilité de reproduire, de diffuser ou d'utiliser à des fins commerciales les documents communiqués.

ART. 11. — L'alinéa 2 de l'article 10 de l'ordonnance n° 59-244 du 4 février 1959 relative au statut général des fonctionnaires est complété ainsi qu'il suit : « ...sous réserve des dispositions réglementant la liberté d'accès aux documents administratifs ».

ART. 12. — Les dispositions du présent titre ne font pas obstacle à l'application de l'article L. 121-19 du code des communes.

ART. 13. — Le dépôt aux archives publiques des documents administratifs communicables aux termes du présent titre ne fait pas obstacle au droit à communication à tout moment desdits documents.

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LOI N° 79-18 DU 3 JANVIER 1979
sur les archives [1]

TITRE PREMIER

Dispositions générales

ARTICLE PREMIER. — Les archives sont l'ensemble des documents, quels que soient leur date, leur forme et leur support matériel, produits ou reçus par toute personne physique ou morale, et par tout service ou organisme public ou privé, dans l'exercice de leur activité.

La conservation de ces documents est organisée dans l'intérêt public tant pour les besoins de la gestion et de la justification des droits des personnes physiques ou morales, publiques ou privées, que pour la documentation historique de la recherche.

ART. 2. — Tout fonctionnaire ou agent chargé de la collecte ou de la conservation d'archives en application des dispositions de la présente loi est tenu au secret professionnel en ce qui concerne tout document qui ne peut être légalement mis à la disposition du public.

TITRE II

Les archives publiques

ART. 3. — Les archives publiques sont :

1° Les documents qui procèdent de l'activité de l'État, des collectivités locales, des établissements et entreprises publics;

2° Les documents qui procèdent de l'activité des organismes de droit privé chargés de la gestion des services publics ou d'une mission de service public;

3° Les minutes et répertoires des officiers publics ou ministériels.

Les archives publiques, quel qu'en soit le possesseur, sont imprescriptibles.

Les conditions de leur conservation sont déterminées par le décret en Conseil d'État prévu à l'article 32 de la présente loi.(...)

ART. 6. — Les documents dont la communication était libre avant leur dépôt aux archives publiques continueront d'être communiqués sans restriction d'aucune sorte à toute personne qui en fera la demande.

Les documents visés à l'article 1er de la loi n° 78-753 du 17 juillet 1978 portant diverses mesures d'amélioration des relations entre l'administration et le public et diverses dispositions d'ordre administratif, social et fiscal demeurent communicables dans les conditions fixées par cette loi.

Tous les autres documents d'archives publiques pourront être librement consultés à l'expiration d'un délai de trente ans ou des délais spéciaux prévus à l'article 7 ci-dessous.

ART. 7. — Le délai au-delà duquel les documents d'archives publiques peuvent être librement consultés est porté à :

1° Cent cinquante ans à compter de la date de naissance pour les documents comportant des renseignements individuels de caractère médical;

2° Cent vingt ans à compter de la date de naissance pour les dossiers de personnel;

3° Cent ans à compter de la date de l'acte ou de la clôture du dossier pour les documents relatifs aux affaires portées devant les juridictions, y compris les décisions de grâce, pour les minutes et répertoires des notaires ainsi que pour les registres de l'état civil et de l'enregistrement;

4° Cent ans à compter de la date du recensement ou de l'enquête, pour les documents contenant des renseignements individuels ayant trait à la vie personnelle et familiale et, d'une manière générale, aux faits et comportements d'ordre privé, collectés dans le cadre des enquêtes statistiques des services publics;

5° Soixante ans à compter de la date de l'acte pour les documents qui contiennent des informations mettant en cause la vie privée ou intéressant la sûreté de l'État ou la défense nationale, et dont la liste est fixée par décret en Conseil d'État.

1. Seuls sont reproduits ici les articles concernant la communication des documents d'archives.

ART. 8. — Sous réserve, en ce qui concerne les minutes des notaires, des dispositions de l'article 23 de la loi du 25 ventôse an XI, l'administration des archives peut autoriser la consultation des documents d'archives publiques avant l'expiration des délais prévus aux articles 6, alinéa 3, et 7 de la présente loi.

Cette consultation n'est assortie d'aucune restriction, sauf disposition expresse de la décision administrative portant autorisation.

Par dérogation aux dispositions du premier alinéa du présent article, aucune autorisation ne peut être accordée aux fins de permettre la communication, avant l'expiration du délai légal de cent ans, des renseignements visés au 4° de l'article 7 de la présente loi.

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DÉCRET N° 79-834 DU 22 SEPTEMBRE 1979
portant application de l'article 9 de la loi n° 78-753 du 17 juillet 1978 en ce qui concerne la liberté d'accès aux documents administratifs

ARTICLE PREMIER. — Les documents administratifs mentionnés au 1 de l'article 9 de la loi du 17 juillet 1978 émanant des administrations centrales de l'État sont, sous réserve des dispositions de l'article 6 de la loi, publiés dans des bulletins ayant une périodicité au moins trimestrielle et comportant dans leur titre la mention Bulletin officiel.

Dans les six mois de l'entrée en vigueur du présent décret, des arrêtés ministériels pris après avis de la commission de coordination de la documentation administrative déterminent pour chaque administration le titre exact du ou des bulletins concernant cette administration, la matière couverte par ce ou ces bulletins ainsi que le lieu où le public peut les consulter ou s'en procurer copie.

ART. 2. — Les directives, instructions, circulaires, mentionnées au 1 de l'article 9 de la loi du 17 juillet 1978, qui émanent des autorités administratives agissant dans les limites du département, sont publiées au recueil des actes administratifs du département ayant une périodicité au moins trimestrielle.

Ceux de ces documents qui émanent d'autorités dont la compétence s'étend au-delà des limites d'un seul département sont publiés au recueil des actes administratifs de chacun des départements concernés.

ART. 3. — L'obligation de publication des directives, instructions, circulaires, mentionnées au 1 de l'article 9 de la loi du 17 juillet 1978 qui émanent des autorités municipales peut être remplie, au choix des communes, soit par l'insertion dans le Bulletin officiel municipal lorsqu'il a une périodicité au moins trimestrielle, soit par transcription dans les trois mois sur un registre tenu, à la mairie, à la disposition du public.

Le maire de chaque commune informe le préfet de la forme de publication adoptée dans sa commune.

ART. 4. — Les directives, instructions, circulaires, mentionnées au 1 de l'article 9 de la loi du 17 juillet 1978 qui émanent des établissements publics ainsi que des organismes chargés de la gestion d'un service public sont publiées, au choix de leurs conseils d'administration, soit par insertion dans un bulletin officiel, soit par transcription sur un registre.

ART. 5. — L'obligation de signalisation prévue au 2 de l'article 9 de la loi du 17 juillet 1978 qui s'impose aux personnes morales mentionnées à l'article 2 de la loi, sous réserve des dispositions de son article 6, est satisfaite :

Pour les documents mentionnés au 1 de l'article 9 de la loi, par leur publication;

Pour les autres documents mentionnés à l'article 1er de la loi, à l'exception des dossiers contenant des documents préparatoires à la prise d'une décision effectivement intervenue, par la publication de la référence desdits documents qui doit comporter leur titre, leur objet, leur date, leur origine, ainsi que le lieu où ils peuvent être consultés ou communiqués;

Pour les dossiers préparatoires à l'intervention d'une décision, par la publication ou la signalisation de cette décision.

ART. 6. — La publication et la signalisation prévues aux articles 1er à 5 ci-dessus doivent intervenir dans les quatre mois suivant la date du document concerné.

DÉCRET N° 79-1038 DU 3 DÉCEMBRE 1979
relatif à la communicabilité des documents d'archives publiques

ARTICLE PREMIER. — Ne peuvent être communiqués qu'après un délai de soixante ans :

Les archives des services du Président de la République et du Premier ministre;

Les archives du ministre de l'intérieur et de l'administration préfectorale signalées lors de leur versement dans un dépôt d'archives publiques comme intéressant la sûreté de l'État;

Les archives des services de la police nationale, mettant en cause la vie privée ou intéressant la sûreté de l'État ou la défense nationale;

Les rapports des inspections générales des ministères intéressant la vie privée ou la sûreté de l'État;

Les dossiers fiscaux et domaniaux contenant des éléments concernant le patrimoine des personnes physiques ou d'autres informations relatives à la vie privée;

Les dossiers domaniaux contenant des informations intéressant la sûreté de l'État ou la défense nationale;

Les documents mettant en cause les négociations financières, monétaires et commerciales avec l'étranger;

Les documents concernant les contentieux avec l'étranger, non réglés, qui intéressent l'État ou les personnes physiques ou morales françaises;

Les archives ayant trait à la prospection et à l'exploitation minières;

Les dossiers de dommages de guerre;

Les archives de la défense nationale mentionnées à l'article 6 du décret n° 79-1035 du 3 décembre 1979 susvisé.

ART. 2. — Toute demande de dérogation aux conditions de communicabilité des documents d'archives publiques est soumise au ministre chargé de la culture (direction des Archives de France) qui statue, après accord de l'autorité qui a effectué le versement ou qui assure la conservation des archives.

L'autorisation de dérogation mentionne expressément la liste des documents qui peuvent être communiqués, l'identité des personnes admises à en prendre connaissance et le lieu où les documents peuvent être consultés. Elle précise en outre, le cas échéant, si la reproduction des documents peut être effectuée et en détermine les modalités.

Le ministre peut, avec l'accord de l'autorité qui a effectué le versement ou qui assure la conservation des archives, accorder des dérogations générales pour certains fonds ou parties de fonds visés à l'article précédent, lorsque les documents qui les composent auront atteint trente ans d'âge.

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APPENDIX 4

FEDERAL REPUBLIC OF GERMANY

BENUTZUNGSORDNUNG FÜR DAS BUNDESARCHIV 11 SEPTEMBER 1969

Erlaß des Bundesministers des Inneren
— K 3-325 157/1 — am 11. September 1969 [1]

§ 1. *Benutzung.* — 1. Archivalien, die der Verfügungsgewalt des Bundesarchivs unterliegen, stehen — soweit diese Benutzungsordnung keine Beschränkungen vorsieht — der Benutzung offen.

2. Zur Benutzung werden

a) Archivalien im Original oder in Kopie vorgelegt oder
b) Abschriften oder photographische Reproduktionen von Archivalien abgegeben oder
c) Auskünfte über den Inhalt von Archivalien erteilt.

3. Über die Art der Benutzung entscheidet das Bundesarchiv.

§ 2. *Benutzungszweck.* — 1. Archivalien können benutzt werden

a) für dienstliche Zwecke der Behörden des Bundes, der Länder, Gemeinden und Gemeindeverbände sowie von Gerichten (amtliche Benutzung);
b) für Forschungen, die der Wissenschaft dienen und deren Ergebnisse in wissenschaftlicher Form veröffentlicht werden sollen (wissenschaftliche Benutzung);
c) zur Vorbereitung von Veröffentlichungen, z.B. durch Presse, Hörfunk, Film und Fernsehen, die der Erziehung, Volksbildung, Kunst oder der Unterrichtung der Öffentlichkeit dienen (publizistische Benutzung);
d) zur Wahrung berechtigter persönlicher Belange (private Benutzung).

2. Ausländer sind Inländern grundsätzlich gleichgestellt, doch kann die Benutzung des Bundesarchivs durch ausländische Staatsbürger eingeschränkt oder versagt werden, wenn Gegenseitigkeit nicht gewährt wird.

§ 3. *Benutzungsantrag.* — 1. Der Antrag auf Benutzung von Archivalien ist schriftlich zu stellen; dabei ist der Gegenstand der Nachforschungen so genau wie möglich anzugeben und der Benutzungszweck nachzuweisen.

2. Werden zu wissenschaftlichen, publizistischen oder privaten Zwecken unveröffentlichte Archivalien benutzt, ist dem Bundesarchiv eine schriftliche Erklärung abzugeben, daß bei der Verwertung daraus gewonnener Erkenntnisse Urheber- und Persönlichkeitsschutzrechte beachtet werden.

3. Die Mitwirkung von Hilfskräften bei der Benutzung bedarf besonderer Genehmigung; die Namen der Hilfskräfte sind im Benutzungsantrag aufzuführen. Auch Hilfskräfte unterliegen den Benutzungsbestimmungen; bei Verstößen haften ihre Auftraggeber.

§ 4. *Benutzungsgenehmigung.* — 1. Über den Benutzungsantrag entscheidet das Bundesarchiv.

2. Die Genehmigung eines Benutzungsantrages kann aus wichtigen persönlichen oder sachlichen Gründen ganz oder für bestimmte Archivalien versagt werden, insbesondere wenn

1. Abdruck in *Der Archivar*, 23 (1970), Sp. 69-71.

a) durch die Benutzung oder das Bekanntwerden des Inhalts dieser Archivalien das Wohl der Bundesrepublik Deutschland oder eines ihrer Länder gefährdet werden könnte ;

b) gegen den Zweck der Benutzung schwerwiegende Bedenken bestehen ;

c) Archivalien Geheimhaltungsvorschriften unterliegen.

3. Zeitweise von der Benutzung ausgenommen sind Archivalien,

a) die zu amtlichen Zwecken benötigt werden ;

b) deren Ordnungs- und Erhaltungszustand durch die Benutzung gefährdet werden könnte.

4. Die Genehmigung kann mit Auflagen verbunden werden, insbesondere wenn bestimmte Archivalien vertraulich zu behandeln sind.

5. Die Genehmigung wird nur für den im Benutzungsantrag bezeichneten Zweck erteilt. Sollen aus den Archivalien gewonnene Erkenntnisse anderweitig verwendet werden, ist eine weitere Genehmigung erforderlich.

6. Die Genehmigung ist zurückzunehmen, wenn bei ihrer Erteilung die Voraussetzungen nach § 2 nicht vorgelegen haben.

7. Die Genehmigung ist zu widerrufen, wenn nachträglich die Voraussetzungen des § 2 wegfallen. Sie kann widerrufen werden, wenn nachträglich Gründe bekannt werden, die nach Absatz 2 zur Versagung hätten führen können, oder wenn der Benutzer die Benutzungsordnung oder die zu ihrer Durchführung erlassenen Bestimmungen gröblich verletzt.

§ 5. *Benutzung amtlichen Schriftguts.* — 1. Unveröffentlichte Akten und Urkunden öffentlich-rechtlicher Herkunft (amtliches Schriftgut) können 30 Jahre nach ihrer Entstehung benutzt werden, soweit nicht nach den folgenden Absätzen eine Benutzung schon früher oder erst später zulässig ist.

2. Vor Ablauf der in Absatz 1 genannten Frist kann amtliches Schriftgut benutzt werden von den Stellen, bei denen es entstanden ist, und ihren Rechts- und Funktionsnachfolgern, mit deren Zustimmung auch von anderen amtlichen Stellen sowie für wissenschaftliche, publizistische und private Zwecke. Falls ein Rechts- und Funktionsnachfolger nicht besteht, entscheidet der Bundesminister des Innern ; der Benutzungsantrag ist auch in diesem Fall beim Bundesarchiv einzureichen.

3. Amtliches Schriftgut, das sich auf einzelne natürliche Personen bezieht (z.B. Personalakten, Prozeßakten), kann grundsätzlich erst 30 Jahre nach dem Tod des Betroffenen benutzt werden.

4. Das in Absatz 3 genannte amtliche Schriftgut kann vor Ablauf der dort genannten Frist, in den ersten 30 Jahren nach seiner Entstehung jedoch nur mit Genehmigung der in Absatz 2 genannten Stellen benutzt werden :

a) von den amtlichen Stellen, denen unbeschränkte Auskunft aus dem Strafregister zu erteilen ist ;

b) von den Stellen, die für die Festsetzung von Arbeitsentgelten, Renten, Versorgungsbezügen und dergleichen zuständig sind, unter Beschränkung auf die für diesen Zweck wesentlichen Schriftstücke ;

c) mit Zustimmung des Betroffenen oder seines Rechtsnachfolgers auch von anderen amtlichen Stellen sowie für wissenschaftliche und publizistische Zwecke ;

d) durch den Betroffenen oder seinen Rechtsnachfolger ; dieser hat, wenn eine Genehmigung der in Absatz 2 genannten Stelle nicht mehr erforderlich ist, ein berechtigtes Interesse nachzuweisen.

5. Amtliches Schriftgut aus der Zeit vor dem 23. Mai 1945 und Dokumentationsmaterial über Ereignisse vor diesem Zeitpunkt können, soweit sie sich nicht auf einzelne natürliche Personen beziehen, mit Inkrafttreten dieser Benutzungsordnung benutzt werden ; beziehen sie sich auf einzelne natürliche Personen, gelten die Absätze 3 und 4, jedoch ist — außer bei Personalakten des öffentlichen Dienstes — die Absatz 4 *c)* vorgesehene Zustimmung nicht erforderlich, wenn bei der Benutzung zu wissenschaftlichen Zwecken der private Lebensbereich unberücksichtigt bleibt oder wenn die statistische Erfassung von Daten über Angehörige bestimmter Gruppen beabsichtigt ist, in deren Ergebnis Einzelfälle nicht erkennbar werden.

§ 6. *Benutzung nichtamtlichen Schriftguts.* — Nichtamtliches Schriftgut (z.B. Nachlässe, Familienarchive, Erlebnis- und Erfahrungsberichte, Dokumentationen aus Privatbesitz) unterliegt Benutzungsbeschränkungen nur, wenn diese mit dem vorherigen Besitzer vereinbart wurden.

§ 7. *Benutzung von Schaufilmen.* — 1. Schaufilme können unter Beachtung der gesetzlichen Schutzrechte und etwa bestehender Aufführungsverbote benutzt werden, wenn sie zu öffentlichen Vorführungen zugelassen waren.

2. Für die Benutzung nicht zu öffentlicher Vorführung bestimmter Filme amtlicher Herkunft gilt § 5, für solche Filme privater Herkunft gilt § 6 entsprechend.

§ 8. *Benutzung von Druckgut, Bildgut und Tonträgern.* — 1. Druckschriften, Plakate, Bilder, Karten und Tonträger können unter Beachtung der gesetzlichen Schutzrechte benutzt werden, soweit nicht beim Erwerb Beschränkungen vereinbart wurden.

2. Für die Benutzung nur zum amtlichen Gebrauch bestimmter Druckschriften, Bilder, Tonträger und Karten gilt § 5 entsprechend.

§ 9. *Benutzungsentgelt und Erstattung von Kosten.* — 1. Die Erhebung von Benutzungsentgelten wird in der Entgeltordnung für das Bundesarchiv geregelt.

2. Dem Bundesarchiv entstehende Kosten für die Benutzung technischer Einrichtungen, für die Herstellung von Reproduktionen und — außer bei amtlicher Benutzung — die Versendung von Archivalien sind zu erstatten ; die Sätze werden durch Aushang und auf Anfrage bekanntgegeben.

3. Bei wissenschaftlicher und publizistischer Benutzung ist von jeder im Druck hergestellten Ausgabe, die unter Auswertung von Archivalien des Bundesarchivs zustande gekommen ist, dem Bundesarchiv ein Belegstück unaufgefordert und unentgeltlich zu überlassen.

§ 10. *Durchführungsbestimmungen.* — Zur Durchführung der Benutzungsordnung erläßt das Bundesarchiv besondere ergänzende Bestimmungen, die von den Benutzern zu beachten sind.

APPENDIX 5

USSR

Rules of the State Archival Fonds of the USSR, 1980[1]
4 April 1980

Les Fonds d'archives d'Etat de l'URSS sont constitués en vue de l'enregistrement, de la conservation et de l'utilisation centralisés des documents.

Les documents du Fonds d'archives d'Etat de l'URSS regrésentent l'histoire plusieurs fois séculaire de notre Patrie. Ses documents reflètent la victoire de la Grande Révolution Socialiste d'Octobre, accomplie par les ouvriers et les paysans de la Russie sour la direction du Parti Communiste avec V.I. Lénine à sa tête, le devenir et le développement de l'Etat soviétique, l'édification en URSS de la société socialiste évoluée.

Les documents du Fonds d'archives d'Etat de l'URSS sont le lien commun de tout le peuple soviétique; ils sont protégés par l'Etat. Le respect rigoureux des normes et des regles de protection et d'utilisation de ces documents ainsi que le souci de leur conservation sont une mission importante des organismes d'Etat et des organisations sociales, le devoir et l'obligation des citoyens de l'URSS.

Article 1. – Le Fonds d'archives d'Etat de l'URSS est l'ensemble des documents appartenant à l'Etat et ayant une valeur politique, économique, scientifique, socio-culturelle ou historique.

Le Fonds d'archives d'Etat de l'URSS ressortit à la compétence de la Direction générale des Archives près le Conseil des Ministres de l'URSS(...).

Art. 23. – Les documents du Fonds d'archives d'Etat de l'URSS sont utilisés à des fins politiques, économiques, scientifiques et socio-culturelles ainsi que pour garantir les droits et les intérêts légitimes des citoyens.

Art. 24. – Les Archives d'Etat de l'URSS, les fonds d'Etat sectoriels et autres archives administratives conservant des documents du Fonds d'archives d'Etat de l'URSS, informent les organes suprêmes de pouvoir et d'administration d'Etat de l'URSS, des Républiques fédérées et autonomes, les Soviets locaux des députés du peuple et les autres organismes gouvernementaux et organisations sociales intéressés, des documents relatifs à des problèmes actuels d'ordre politique, économique, scientifique et culturel, exécutent leurs commandes, délivrent, suivant la procédure établie, des copies de documents et, à l'intention des citoyens de l'URSS, des certificats à caractère socio-juridique se rapportant aux documents du Fonds d'archives d'Etat de l'URSS, mettent ces derniers ou leurs copies à la disposition des lecteurs dans les salles des archives, organisent des expositions de documents et les utilisent en vue d'informer des documents du Fonds d'archives d'Etat de l'URSS et de leur contenu la presse, la télévision, le cinéma et la radio.

Les autorisations d'accès aux documents du Fonds d'archives d'Etat de l'URSS, certificats d'archives, copies et extraits, sollicités par les organismes et les citoyens des Etats étrangers, sont délivrés par la Direction générale des Archives près le Conseil des Ministres de l'URSS selon les règles établies.

Art. 25. – Les Archives d'Etat sont chargées, selon l'ordre établi, de publier des documents ainsi que de préparer les documents du Fonds d'archives d'Etat de l'URSS en vue de l'édition de divers ouvrages de référence.

1. Reproduction de la traduction française publiée dans le volume XXIX d'Archivum, pp. 338-347 - Seuls sont reproduits ici les articles concernant la communication des documents d'archives.

Art. 26. – Les règles d'utilisation des documents du Fonds d'archives d'Etat de l'URSS, conservés dans les Archives d'Etat, sont définies par la Direction générale des Archives près le Conseil des Ministres de l'URSS. Les régles d'utilisation des documents du Fonds d'archives d'Etat de l'URSS conservés dans les fonds d'Etat sectoriels et autres archives administratives, sont définies par les ministères, administrations et organisations intéressés conformément aux règles fixées par la Direction générale des Archives près le Conseil des Ministres de l'URSS.

Art. 27. – La responsabilité quant au respect des règles d'utilisation des documents et à l'exactitude des informations que contiennent ces derniers, incombe aux directeurs d'établissements, organisations et entreprises ainsi qu'aux citoyens qui font usage des documents du Fonds d'archives d'Etat de l'URSS.

APPENDIX 6

Freedom of Information Act, 1974[1] (5 United States Code 552)

SUBCHAPTER II. ADMINISTRATIVE PROCEDURE

Section 2. Definitions. – For the purpose of this subchapter:

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include (A) the Congress; (B) the courts of the United States; (C) the governments of the territories or possessions of the United States; (D) the government of the District of Columbia; or except as to the requirements of section 552 of this title. (E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them; (F) courts martial and military commissions; (G) military authority exercised in the field in time of war or in occupied territory; or (H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891–1902, and former section 1641 (b) (2), of title 50, appendix.

(2) "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) "party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of

1. 21 November, 1974. – Data supplied by Mr. R. Michael McReynolds, Assistant Chief for Reference, Judicial and Fiscal Branch, National Archives and Records Service, Washington D.C., 18 February 1981.

1. Reproduction des textes législatifs des Etats-Unis tels qu'ils ont été publiés dans le volume XXVIII d'Archivum, p. 405-411.

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valuations, costs, or accounting, or practices bearing on any of the foregoing;

(5) "rule making" means agency process for formulating amending, or repealing a rule;

(6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declatory in form, of an agency in a matter other than rule making but including licensing;

(7) "adjudication" means agency process for the formulation of an order;

(8) "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(10) "sanction" includes the whole or a part of an agency (A) prohibition, requirement, limitation, or other condition affecting the freedom of a person; (B) withholding of relief; (C) imposition of penalty or fine; (D) destruction, taking, seizure, or withholding of property; (E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (F) requirement, revocation, or suspension of a license; or (G) taking other compulsory or restrictive action;

(11) "relief" includes the whole or a part of an agency (A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (B) recognition of a claim, right, immunity, privilege, exemption, or exception; or (C) taking of other action on the application or petition of, and beneficial to, a person;

(12) "agency proceeding" means an agency process as defined by paragraphs (5), (7), and (9) of this section; and

(13) "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

Sec. 3. Public information. Agency rules, opinions, orders, records, and proceedings.

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public; (A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions; (B) statements of the general course and methods by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available; (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or

examinations; (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and (E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published (. . .).

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying (A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases; (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and (C) administrative staff manuals and instructions to staff that affect a member of the public; unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if (i) it has been indexed and either made available or published as provided by this paragraph; or (ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(4) (A) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document

search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the information can be considered as primarily benefiting the general public.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. (. . .).

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member (. . .).

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6) (A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall (i) determine within ten days (. . .) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency and adverse determination; and (ii) make a determination with respect to any appeal within twenty days (. . .) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection (. . .).

(b) This section does not apply to matters that are:

(1) (A) specifically authorized under criteria established by an Executive order

to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such record would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(d) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. (. . .).

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case.

the disposition of such case, and the cost, fees, and penalties assessed under subsection (a) (4) (E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(e) For purposes of this section, the term "agency" as defined in section 551 (1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

Presidential Recordings and Materials Preservation Act 1974[1] (3 Statutes at Large 1695):

Section 101. Delivery and retention of certain Presidential materials. – (a) Notwithstanding any other law or any agreement or understanding made pursuant to section 2107 of title 44, United States Code [this section] any Federal employee in possession shall deliver, and the Administrator of General Services (hereinafter in this title referred to as the "Administrator") shall receive, obtain, or retain, complete possession and control of all original tape recordings of conversations which were recorded or caused to be recorded by any officer or employee of the Federal Government and which (1) involve former President Richard M. Nixon or other individuals who, at the time of the conversation, were employed by the Federal Government; (2) were recorded in the White House or in the office of the President in the Executive Office Buildings located in Washington, District of Columbia; Camp David, Maryland; Key Biscayne, Florida; or San Clemente, California; and (3) were recorded during the period beginning January 20, 1969, and ending August 9, 1974.

(b) (1) Notwithstanding any other law or any agreement or understanding made pursuant to section 2107 of title 44, United States Code [this section], the Administrator shall receive, retain, or make reasonable efforts to obtain, complete possession and control of all papers, documents, memorandums, transcripts and other objects and materials which constitute the Presidential historical materials of Richard M. Nixon covering the period beginning January 20, 1969, and ending August 9, 1974.

(2) For purposes of this subsection, the term "historical materials" has the meaning given it by section 2101 of title 44, United States Code [section 2101 of this title].

Sec. 102. Availability of certain Presidential materials. – (a) None of the tape recordings or other materials referred to in section 101 shall be destroyed, except as hereafter may be provided by law.

1 19. December, 1974.

(b) Nothwithstanding any other provision of this title, any other law, or any agreement or understanding made pursuant to section 2107 of title 44, United States Code [this section], the tape recordings and other materials referred to in section 101 shall, immediately upon the date of enactment of this title, be made available, subject to any rights, defenses, or privileges which the Federal Government or any person may invoke, for use in any judicial proceeding or otherwise subject to court subpena or other legal process (. . .).

(c) Richard M. Nixon, or any person whom he may designate in writing, shall at all times have access to the tape recordings and other materials referred to in section 101 for any purpose which is consistent with the provisions of this title, subsequent and subject to the regulations which the Administrator shall issue pursuant to section 103.

(d) Any agency or department in the executive branch of the Federal Government shall at all times have access to the tape recordings and other materials referred to in section 101 for lawful Government use, subject to the regulations which the Administrator shall issue pursuant to section 103.

Sec. 103. Regulations to protect certain tape recordings and other materials. – The Administrator shall issue at the earliest possible date such regulations as may be necessary to assure the protection of the tape recording and other materials referred to in section 101 from loss or destruction, and to prevent access to such recordings and materials by unauthorized persons. Custody of such recordings and materials shall be maintained in Washington, District of Columbia, or its metropolitan area, except as may otherwise be necessary to carry out the provisions of this title.

Sec. 104. Regulations relating to public access. – (a) The Administrator shall within ninety days after the date of enactment of this title [Dec. 19, 1974] submit to each House of the Congress a report proposing and explaining regulations that would provide public access to the tape recordings and other materials referred to in section 101 (. . .).

(b) (1) The regulations proposed by the Administrator in the report required by subsection (a) shall take effect upon the expiration of ninety legislative days after the submission of such report, unless such regulations are disapproved by a resolution adopted by either House or the Congress during such period.

(2) The Administrator may not issue any regulation or make any change in a regulation if such regulation or change is disapproved by either House of the Congress under this subsection (. . .).

(c) The provisions of this title shall not apply, on and after the date upon which regulations proposed by the Administrator take effect under subsection (b), to any tape recordings or other materials given to Richard M. Nixon, or his heirs, pursuant to subsection (a) (7).[1]

1. "Tape recordings and other materials which are not likely to be related to the abuses of the executive power popularly identified under the generic term 'Watergate' ,and are not otherwise of histo ical significance".

(d) The provisions of this title shall not in any way affect the rights, limitations or exemptions appplicable under the Freedom of Information Act, 5 U.S.C. § 552 et seq. [section 552 et seq. of Title 5].

Sec. 105. Judicial review. – (a) The United States District Court for the District of Columbia shall have exclusive jurisdiction to hear challenges to the legal or constitutional validity of this title or of any regulation issued under the authority granted by this title, and any action or proceeding involving the question of title, ownership, custody, possession, or control of any tape recording or material referred to in section 101 or involving payment of any just compensation which may be due in connection therewith (. . .).

(b) If, under the procedures established by subsection (a), a judicial decision is rendered that a particular provision of this title, or a particular regulation issued under the authority granted by this title, is unconstitutional or otherwise invalid, such decision shall not affect in any way the validity or enforcement of any other provision of this title or any regulation issued under the authority granted by this title.

(c) If a final decision of such court holds that any provision of this title has deprived an individual of private property without just compensation, then there shall be paid out of the general fund of the Treasury of the United States such amount or amounts as may be adjudged just by that court.

Sec. 106. Authorization of appropriations. – There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

Privacy Act, 1974 (88 Statutes at Large 1896) [1]

(a) Definitions. – For purposes of this section:

(1) the term "agency" means agency as defined in section 552 (e) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

1. 31 December, 1974.

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13; and

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(b) Conditions of disclosure. – No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be (1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties; (2) required under section 552 of this title; (3) for a routine use as defined in subsection (a) (7) of this section and described under subsection (e) (4) (D) of this section; (4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13; (5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable; (6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value; (7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought; (8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual; (9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee therof, any joint committee of Congress or subcommittee of any such joint committee; (10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or (11) pursuant to the order of a court of competent jurisdiction.

(c) Accounting for certain disclosures. – Each agency, with respect to each system of records under its control, shall (1) except for disclosures made under subsections (b) (1) or (b) (2) of this section, keep an accurate accounting of (A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and (B) the name and address of the person or agency to whom the disclosure is made; (2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made; (3) except for disclosures made under subsection (b) (7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and (4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to records. – Each agency that maintains a system of records shall:

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the indivual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and (A) not later than 10 days (. . .) after the date of receipt of such request, acknowledge in writing such receipt; and (B) promptly, either (i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or (ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (. . .) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing offical's determination under subsection (g) (1) (A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreemen , occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow any individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) *Agency requirements.* - Each agency that maintains a system of records shall:

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual (A) the authority (whether granted by statute, or by executive order of the President) which authorizes the sollicitation of the information and whether disclosure of such information is mandatory or voluntary; (B) the principal purpose or purposes for which the information is intended to be used; (C) the routine uses which may be made of the information, as published pursuant to paragraph (4) (D) of this subsection; and (D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register at least annually a notice of the existence and character of the system of records (. . .).

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b) (2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and

(11) at least 30 days prior to publication of information under paragraph (4) (D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

(f) Agency rules. – In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title (. . .).

(g) Civil remedies. – (1) Whenever any agency (A) makes a determination under subsection (d) (3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection; (B) refuses to comply with an individual request under subsection (d) (1) of this section; (C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or (D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such way as to have an adverse effect on an individual, the individual may bring civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2) (A) In any suit brought under the provisions of subsection (g) (1) (A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo. (B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3) (A) In any suit brought under the provisions of subsection (g) (1) (B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action. (B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g) (1) (C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of (A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $ 1,000; and (B) the costs of the action together with reasonable attorney fees as determined by the court (. . .).

(h) Rights of legal guardians. – (. . .)

(i) Criminal penalties. – (1) Any officer or employee of an agency, who by virtue of this employment or official position, has possession of, or access to, agency records which contain individually identifiable rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more that $ 5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e) (4) of this section shall be guilty of a misdemeanor and fined not more than $ 5,000.

(j) General exemptions. – The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553 (b) (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c) (1) and (2), (e) (4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i) if the system of records is (1) maintained by the Central Intelligence Agency; or (2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B)

information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553 (c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific exemptions. – The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553 (b) (1), (2), and (3), (c) and (e) of this title, to exempt any system of records within the agency from subsections (c) (3), (d), (e) (1), (e) (4) (G), (H), and (I) and (f) of this section if the system of records is

(1) subject to the provisions of section 552 (b) (1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j) (2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would

reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence (. . .)

(l) Archival records. – (1) Each agency record which is accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e) (4) (A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States is a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e) (4) (A) through (G) and (e) (9) of this section.

(m) Government contractors. – When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(n) Mailing lists. – An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Report on new system. – (. . .).

(p) Annual report. – (. . .).

(q) Effects of other laws. – (. . .).